Official Gazette

REPUBLIC OF THE PHILIPPINES

EDITED AT THE OFFICE OF THE PRESIDENT, UNDER COMMONWEALTH ACT NO. 638
ENTERED AS SECOND-CLASS MATTER, MANILA POST OFFICE, DECEMBER 26, 1905

VOL. 54 MANILA, PHILIPPINES, DECEMBER 22, 1958 No. 37

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OFFICIAL WEEK IN REVIEW

December 14.—PRESIDENT Garcia congratulated the air forces of five nations which participated in an air show held in connection with the opening of aviation week today saying that their splendid showing was a demonstration "not only of their air potential but also of their genuine interest in cooperative international unity."

In brief remarks delivered this morning at the domestic airport where he formally opened the observance of Aviation Week under the auspices of the Civil Aeronautics Administration, the President said that the air show was more than a display of what the modern flying machines of the participating nations could do, as it was also a demonstration of the willingness of those nations to cooperate with one another.

"This annual celebration brings to the attention of the public the important role which civil aviation is playing in our national progress and security," the President said. "It is therefore fitting that we give a measure of recognition to civil aviation as one of the most important vehicles of human progress," he added.

President and Mrs. Garcia was at the airport for more than three hours this morning and watched with admiration the aeronautical skill displayed by Filipino, American, British, Australian, and New Zealander pilots as they put their fast, jet-powered planes into difficult and highly complicated aerial maneuvers.

Mrs. Leonila D. Garcia cut the ribbons which released two hundred baloons into the air, signalling the start of the air show. The First Lady was assisted by Mesdames Urbano Caldoza, wife of the CAA administrator, and Mrs. Victoria L. Araneta of the Feati Institute of Technology.

The air show consisted of precision mass formation flying, sonic boom demonstrations, supersonic passes over the airfield, aerial refueling, afterburner climbs, and dive-bombing demonstration.

Participating in the impressive display were F–100 Super Sabrejets, B–66 *Destroyers,* KB–50 *Tankers, Canberra* jet-bombers, F–86 *Sabre* all-weather jet fighters, *Avro Vulcan* delta-wing jet-bombers, B–57 *Light Bombers,* AD5N *Skyraiders,* A3D *Skywarriors,* F2H-3 *Banshees,* F–3H *Demons,* and FJ–4B *Furies.*

The crowd was particularly impressed by two peculiar-looking *Avro Vulcan* delta-wing jet bombers from the British Royal Air Force which started their manuevers by flying low over the trees and which seemed to touch the roofs of the plane hangars in the airport.

The President and the First Lady arrived at the domestic airport about 8:20 a.m. for the ceremonies. The speech of the Chief Executive opening the observance of Aviation Week lasted only five minutes. He was introduced by CAA Administrator Urbano Caldoza.

The President also spent some time going around the field, inspecting various types of military aircrafts parked in the area.

ABOUT 11:30 a.m., the President and the First Lady left the airport and motored to Sta. Ana where they were guests of honor at the corner-stone-laying ceremonies of the ₱150,000 edifice which will house recreation halls for workers of the Marcelo Enterprises, which observed its 20th anniversary today.

IN THE EVENING, the President and the First Lady was at the Manila Hotel where they were again guests at an affair held under the auspices of the Woman Pharmaceutical Association of the Philippines and in which the First Lady was conferred an award.

December 15.—THIS MORNING President Garcia called upon the delegates to the five-day conference of Asian universities on cultural cooperation to "bring about a renaissance of learning in Asia and hasten the return of cultural preeminence to the Orient."

Speaking at the conference's opening session in the conference hall of the UP library building in Diliman, Quezon City, the Chief Executive reminded Asia's leading educators that the training of leaders who can safely steer the Ship of State and who can be called upon for counsel and guidance in times of stress is one of the important functions of an institution of higher learning.

The President noted that most of the countries in Asia are still in the period of rapid growth and that it is essential that the reservoir of leadership be replenished at all times.

President Garcia said the heavy demands on the modern leader's wisdom and resourcefulness require a well-balanced education involving all powers of the individual; namely, intellectual, physical, aesthetic, and spiritual. For this reason, he added, the training for leadership must make provision for culture.

The President said he favored a cultural exchange among Asian countries, as it will go a long way towards promoting mutual understanding, closer relations, and lasting friendship among them.

He stated that the conquest and colonization of most Asian countries in the past has resulted in the development of their respective cultures along different lines. This diversity, he said, will make the exchange of culture among Asian nations highly beneficial and fruitful because every country has something to give to the other.

Quoting H. G. Wells who characterized human history as a race between education and catastrophe, President Garcia concluded his address by charging the educators with the "responsibility of strengthening the cause of peace by spreading culture as a unifying force in building the defense of peace in the minds of men."

On the President's arrival at the university campus, a 21-gun salute was fired while a guard of honor composed of select UP ROTC cadets stood stiffly at attention in front of the UP administration building.

After acknowledging the honors, President Garcia and UP President Vicente G. Sinco proceeded towards the library building with the honor guard leading the way.

They were met at the entrance to the building by officials of the Department of Education headed by acting Education Secretary Daniel M. Salcedo, Undersecretary Benigno Aldana, and Director Jesus E. Perpiñan of the Bureau of Private Schools.

Also on hand were delegates to the conference, UP faculty members, and members of the diplomatic corps, among them, U. S. Ambassador Charles E. Bohlen, Chinese Ambassador Chen Chi-mai, and Japanese Ambassador Morio Yukawa.

Diplomats who were not able to attend the opening session of the conference were represented by their cultural attaches.

From Diliman, President Garcia motored to Malacañang where he went over pending state papers until lunchtime.

EARLIER this morning, the President held a breakfast conference with members of the Ormoc Sugar Planters' Association and the management of the Ormoc Sugar Central. They were accompanied by Rep. Dominador M. Tan of Leyte.

Present at the conference were Agapito Pungos, Dr. Hermenegildo Serafica, Iñaki Larizabal, Enrique Garcia, Melchor Larizabal, Benjamin Pungos, William A. Paradise, Jorge Tan, Jr., Dionisio Torrevillas, Jesus Lladoc, secretary of the association, Tirso Revilla, manager of the Ormoc Sugar Central, and Gabriel Villanueva, legal counsel of the association.

Among the subjects discussed during the conference was their request for an increase in their sugar quota allocation in view of their increased production and their capacity to fill the quota assigned to them in the past.

THE President this afternoon launched this year's Philippine cancer fund drive by presenting a ₱1,000 check to Gerald Wilkinson, who represented Earl Carroll, chairman of the campaign sponsored by the Philippine Cancer Society.

PRESIDENT and Mrs. Garcia this evening motored to see the world flyweight title fight between champion Pascual Perez of Argentina and Dommy Ursua, Filipino challenger.

Malacañang said the President decided to attend the title fight to give his moral support to the Filipino challenger.

It was the first time the President went to the Rizal stadium to attend a sports event.

President Garcia mobilized today relief agencies of the government to extend immediate assistance to the passengers of the ill-fated *M.V. Hiawatha,* which sank off the coast of Surigao yesterday.

On instructions from the President, Executive Secretary Juan C. Pajo ordered the Navy near the scene of the disaster to rush to the area and help in the rescue operations of some 200 passengers.

The Social Welfare Administration and the Department of Health, which were likewise alerted, lost no time in dispatching relief workers and relief and medical supplies to the area.

Malacañang instructed the Navy to report on further progress of the rescue and relief operations.

December 16.— AT THE COUNCIL OF STATE meeting this noon, President Garcia reported on details of the loans obtained as a result of his state visit to the United States last June.

The President based his report on a summary prepared by Budget Commissioner Dominador Aytona, PNB President Eduardo Romualdez, and Gov. Miguel Cuaderno of the Central Bank. The trio had been left behind in the United States to work out the details of the loans.

President Garcia and the Council of State approved today the proposal to start talks on the working out of a treaty of amity, commerce, and navigation between the Philippines and Japan.

The talks will be conducted on a bi-partisan basis on the part of the Philippine Government.

The approval of the talks came after President Garcia had rendered a report on his state visit to Japan at the meeting this noon of the Council of State.

In the course of his report, the President called attention to that part of the joint communique issued by the President and Prime Minister Nobusuke Kishi that "as it seems desirable that both countries should endeavor to ultimately place their relations on a more stable basis, they agreed to consider, at the appropriate time, the possibility of working out a treaty of amity, commerce, and navigation, and pending such treaty, they would endeavor to encourage greater trade and commerce between them by such measures as they may consider mutually beneficial to both countries."

The Council also:

(1) Passed a resolution congratulating the President for his "signal success" on his visit to Japan;

(2) Endorsed the loan from Japan to finance the Marikina River multipurpose project and the telecommunications expansion and improvement project within the framework of the Reparations Agreement;

(3) Heard the final report of PNB President Eduardo Romualdez, Budget Commissioner Dominador Aytona, and Governor Miguel Cuaderno of the Central Bank, who had been left behind in the United States to work out details of the loans obtained by the President during his U.S. state visit; and

(4) Heard Senate President Rordiguez report on his impressions during his recent trip abroad.

While discussing his recent trip to Japan, the President emphasized that no commitment of any kind had been made in his dealings with Japanese officialdom and businessmen. He said he had expressed the desire of the Filipino people to resume their pre-war relations with Japan and that the Japanese people had responded enthusiastically.

The President explained that although his state visit was one of goodwill, some other matters had been taken up incidentally by the Japanese officials such as the financing of the Marikina River multi-purpose and the telecommunications projects. He said that Public Works Secretary Florencio Moreno had been left behind in Tokyo to work out details of the negotiations and will report to the Council immediately after his return.

The President thanked members of the Council for passing the resolution congratulating him for the success of his trip. He expressed the hope that his "fruitful trip" would find expression in ever improving cultural, economic, and political relations between the Philippines and Japan.

The Chief Executive said that Japanese officials had welcomed his proposals for cultural exchanges between the two countries. He expressed the belief that the promotion of cultural relations would pave the way for better understanding and easier trade dealings between the Filipinos and the Japanese to the mutual benefit of both peoples.

The President convoked the council of state meeting shortly before 1 p.m., and it lasted up to 3:20 p.m. During the meeting, the President had Foreign Affairs Secretary Felixberto M. Serrano read the communique issued jointly by the President and Prime Minister Kishi in Japan.

Sen. Recto proposed that the declaration in the joint communique that the Philippine economy and the Japanese economy are complementary in character, should not be understood as making reference to the well known fact that Japan is a highly industrialized country, essentially a manufacturer of finished products, part of which is exported to the Philippines, importing at the same time from the latter a large quantity of raw material for her industries, while the Philippines is at present mainly an agricultural country, producing raw materials, agricultural products, and mineral which are exported in important quantities to Japan.

Not a single instance in history can be found, Sen. Recto added, where a trade arrangement between two nations, one industrial and supplier of processed goods, and the other, agricultural and supplier of raw materials, has benefited the latter, and inasmuch as the Philippines is determined to prosecute her industrialization program as fast as her means will permit, it is to be expected that her raw materials are primarily intended for her own industries. The words "complementary economy" appearing on the communique, should therefore be understood, Sen. Recto concluded, as meaning only that there are Japanese products that are, and can be sold, to the Philippines, and Philippine commodities, like sugar and coconut oil, that can be sold to Japan.

The President explained that such was the meaning intended in the communique, and the Council of State voted unanimously to approve and make of record Sen. Recto's proposal.

EARLIER this morning, President Garcia conferred with Executive Secretary Juan C. Pajo and Judge Salvador Esguerra, Malacañang legal adviser, on the interpretation of certain provisions of the Reparations Agreement.

Later, President Garcia held a closed-door conference with Finance Secretary Jaime Hernandez and CB Governor Cuaderno after which he proceeded to the State dining room for the Council of State meeting.

IN the afternoon, the President received John J. Nelley, vice-president of the Chase Manhattan Bank, New York.

The banker was accompanied by Eduardo Z. Romualdez, president of the Philippine National Bank.

The President also received Ambassador Charles E. Bohlen, Manolo Elizalde, and Justice Buenaventura Ocampo, chairman of the Presidential Committee on Administration Performance Efficiency.

December 17.—PRESIDENT Garcia received a continuous stream of congressional callers in Malacañang from 10 a.m. to 1:30 p.m. today.

Sen. Domocao Alonto conferred with the President on political and economic matters and discussed with the Chief Executive the feasibility of entering into treaties of friendship and cultural cooperation with Asian and African countries.

Sen. Eulogio Balao and Rep. Felipe Garduque of Cagayan accompanied Mayor Lucilo Pascual of Lallo, Cagayan, who took his oath of affiliation as a Nacionalista before President Garcia in the study room of Malacañang.

Among those who witnessed the oath-taking were Mayors Jose Villegas of Alcala, president of the Nacionalista Party in Cagayan, and Venancio Morales of Amolong and Manager Peregrino R. Quinto, manager of the Philippine Tobacco Administration.

On representations by Rep. Ismael Veloso of Leyte, President Garcia directed Manager Eugenio Santos of the Philippine Charity Sweepstakes Office to facilitate the release of ₱50,000 for the Leyte Provincial Hospital.

Rep. Apolinario Apacible of Batangas requested the President the allocation of several units of prefabricated school buildings for several towns in his district to replace those either damaged or destroyed by typhoons that had hit the province during the last few years.

Rep. Apacible was accompanied by Mayors Pedro Macalalag of Tuy and Luis Ramos of Balayan.

Rep. Delfin Albano of Isabela asked the President to issue a proclamation for the recovery of a lot previously reserved for the Armed Forces and granting it to the municipality of Ilagan as the site of their new municipal building.

Other congressional callers of the President this morning were Sen. Roseller Lim and Reps. Ricardo Ladrido of Iloilo, Faustino Tobia of Ilocos Sur, Leonardo Perez of Nueva Vizcaya, Alberto Q. Ubay of Zamboanga del Norte, Luciano Millan of Pangasinan, and Luis Hora of Mountain Province.

THE PRESIDENT acted today to beat the seasonal mail jam by releasing ₱200,000 to continue the service of wage employees of the Bureau of Posts in Manila and the provinces.

Executive Secretary Juan C. Pajo, who released the amount by authority of the President, said this move will not only relieve the Christmas mail jam but also the anxiety of the wage-earners who face the bleak prospect of being laid off this Christmas.

The amount of ₱200,000 was released by the President on recommendation of Deputy Budget Commissioner Faustino Sy-Changco, owing to the heavy volume of air mails arriving at the Bureau of Posts, which the regular employees are unable to tackle.

The amount released will be chargeable against the excess income of ₱590,355.60 over corresponding appropriation for the air mail services as of October 31, 1958.

AT THE CABINET meeting this afternoon, President Garcia reaffirmed the national policy enunciated by his administration of non-intercourse with communist countries, as he upheld the action taken by the Philippine Consulate General in Hongkong in refusing to issue a crew-list visa to the crew members of a Yugoslav vessel.

The matter was brought to the Cabinet meeting this afternoon when the Botelho Shipping Corporation, local agent of the Yugoslav ship, requested a reconsideration of the action taken by the Philippine Consulate General in Hongkong.

Foreign Affairs Secretary Felixberto Serrano alleged that as a matter of sound political and economic policy of the Philippine Government,

his department holds the view that the government should not allow foreign vessels under the registry of communist countries to engage in any form of commercial transaction in the Philippines.

Serrano further alleged that the Yugoslav ship should not be allowed to be the carrier of Philippine products, as it will puncture the national policy of non-trade with communist countries. He further alleged that once punctured it will be taken advantage of by other communist countries.

In recommending that the request of the Botelho Shipping Corporation be denied, Commerce Secretary Pedro Hernaez also observed that shipping companies like the Botelho should know the Philippine policy of non-trade with communist countries.

Defense Secretary Jesus Vargas, for his part, also recommended that the request be denied, alleging that for reasons of national security communist-registered vessels should not be allowed to call at Philippine ports.

The Yugoslav ship entered into contracts with two Filipino concerns for shipping 500 tons of copra to Europe and logs to Venice, Italy, but when the ship's agent applied for a crew-list visa for the crew members, the Philippine consulate general in Hongkong refused to act favorably on the application, saying that the Philippines has no diplomatic relations with Yugoslavia by reasons of the latter's non-recognition of the Independence of the Philippine Republic.

The ship was scheduled to leave Hongkong on December 13, 1958, and call at Cebu to load the copra and proceed to Surigao to load the logs, but the Bureau of Immigration was poised to fine the vessel in case it proceeded to the Philippines with a crew-list visa for its crew members.

The Cabinet restored the ₱22.8 million cut slashed by a three-man committee from the budget of the Department of Education to insure continuous classes in the public schools until March.

After restoring the slashed item, President Garcia authorized the release of ₱9 million from the reserves of the Department of Education to cover payment of the salaries of teachers up to the end of the school year.

The Cabinet reviewed the report of the three-man committee, headed by Finance Secretary Jaime Hernandez, which slashed the budgets of the different government offices in an effort to avert a ₱74 million deficit this year.

Significantly, the Hernandez committee turned about in its report and recommended the restoration of the ₱22.8 million cut it had proposed from the Department of Education.

The Cabinet review of the committee recommendations, will be resumed at a special meeting which the President will call before the end of the current year.

The President and the Cabinet, at their discussions this afternoon, agreed to restore the huge cut from the education budget.

The Cabinet also agreed to slash only ₱7 million from the budget of the Dapartment of National Defense. The Hernandez committee had previously sought to prune ₱30 million from the budget of the defense department.

Defense Secretary Jesus Vargas objected to the slash of ₱7 million and appealed to the Cabinet to reduce the amount to ₱5 million.

Vargas claimed he would be forced to demobilize some 24,000 officers and men in the event the budget is cut by ₱7 million.

The Hernandez committee submitted today its report, recommending only a total slash of ₱16,081,560 from the budgetary appropriations of the different government offices.

Although the committee had previously outlined a total slash of ₱73.4 million from the different appropriations of government offices, the body reconsidered its decision and reduced the amount it proposed to slash from the budget.

Malacañang said the Hernandez committee recommended adoption of other measures to cover up the expected deficit of ₱58 million.

The committee proposed that funds be taken from special levies to cover up the expected gap between the appropriation and income figures.

PRESIDENT Garcia this evening called upon the press in the Philippines to maintain its freedom and fight the forces which threaten to enslave the newspapermen.

He was the principal speaker at the third annual award of the Manila Suburban Press Club held at the National Press Club's deck.

President Garcia said "we have in this country one of the freest and strongest press in the world today."

Turning to the provincial press, the President said the former has a grave responsibility, as the newspapermen should have the "highest integrity" in the exercise of their profession.

"By integrity," the President pointed out, "we mean the strict adherence to what is factual and true and the maintenance of a free and strong press. A news item slanted to serve the interest of one man, or an editorial designed to enhance the ambitions of an interested individual—compensated by political favors or promises of political opportunities are manifestations of servitude. Servitude is not freedom; it is a sign of weakness," he said.

President Garcia also paid tribute to the provincial press which, he said, is serving the greatest area in the country.

He called the provincial press as the backbone of public opinion. "Its collective strength," he said, "places it in a unique position as educator, informant, and guardian to millions of our people."

The President also pointed out that an "accurate report can serve not only your interest as reliable pressmen but what is more important the welfare of our people. An inaccuracy," he said, "can have disastrous effects to the country."

He urged the newspapermen to be fair and stressed that any "good journalist, true to his profession, knows that to report only one side of a story is not only being unfair to the individual concerned but he is guilty also of one-sided, biased, and prejudiced reporting."

President Garcia handed the certificate of award to 34 awardees.

December 18.—PRESIDENT Garcia conferred with Foreign Affairs Secretary Felixberto Serrano this noon on the proposed start of talks preparatory to negotiations toward a treaty of amity, commerce, and navigation between the Philippines and Japan.

The proposed talks had been approved at the Council of State meeting at Malacañang last Tuesday. It will be conducted in a bi-partisan basis.

Earlier this morning, the President received governors and mayors most of whom presented requests for financial aid for their respective provinces and municipalities.

Gov. Juan Triviño of Camarines Sur asked the Chief Executive to expedite the release of financial assistance for 10 towns in his province which were badly damaged by typhoon *Nancy* three months ago.

Gov. Leon Guinto, Sr., accompanied three mayors of Quezon province who likewise requested financial aid for the repair of damages wrought on their towns by typhoons. The mayors were Leon Ruidora of Gen. Nakar, Tomas R. Angara of Dingalan, and Edgardo Cabangon of Calawag.

Also with Gov. Guinto was ex-Rep. Tomas Morato of Quezon, who paid a courtesy call on the President.

Tarlac Gov. Arsenio Lugay requested President Garcia to direct the Land Tenure Administration to expedite payment of ₱324,000 for a 25 hectares of land belonging to the Hacienda Bautista-Sioco located in the poblacion of San Manuel, Tarlac, for subdivision and distribution to tenants.

He also requested the release of ₱7,500 for the completion of the municipal building of San Manuel and ₱10,000 for the town hall of San Clemente, Tarlac. Gov. Lugay was accompanied by Mayor Amado Robles of San Clemente.

Pangasinan Gov. Conrado Estrella briefed the President on the political situation in his province and the problems confronting the locality, partic-

ularly the acute lack of school buildings to replace those destroyed by typhoons.

Gov. Vicente de Lara of Misamis Oriental requested the appropriation of ₱20,000 from the President's contingent funds to finance the repair of school buildings in his province damaged by typhoons.

Gov. Jose Dinglasan of Capiz sought the Chief Executive's intervention in securing the release of ₱100,000 for the completion of the airport in Roxas City.

Mayors Getulio Calope of Balilihan and Salustiano Baura of Tubigon, Bohol, also requested assistance from the President for the repair of certain public works installations in their respective municipalities which were damaged by typhoon *Nancy*.

Mayor Lorenzo Belarmino of Sta. Cruz, Marinduque, sought the aid of President Garcia in the completion of a ₱124,000 irrigation project in his municipaly, work on which had already been started.

The President received callers until 2 p.m. After the last caller, President Garcia proceeded to his bedroom, where he conferred with Secretary Serrano over a late lunch on the text of a joint Philippine–Japan communique on the agreement for the Marikina multi-purpose dam and a nation-wide telecommunications system.

THIS evening the President stressed the need for forging closer relations with free Asian countries for the economic, political, and military survival of the Philippines from communist enslavement.

Addressing the annual "President's Night" dinner of the Manila Overseas Press Club, the President justified the new emphasis in the country's foreign policy toward Asia.

He denied, however, that there has been any fundamental change in the country's foreign relations with other countries.

"Racially and geographically," the President said, "we are an Asian people. If for no other reason we should be making this effort to reach out for closer cooperation, for better understanding, for the cultural exchange which is the very essence of man's constantly broadening spiritual and intellectual horizons."

He said that his recent visit to Japan was the "forward step" towards the new emphasis in the country's foreign policy towards Asia.

"There is a growing awareness in Asia that the relentless drive of Communism for world domination," he said, "is something that cannot be ignored by any free Asian."

The President, however, said that it is difficult to say at time exactly what form of collective Asian defense against communist economic and political aggression should take.

"Among the members of the free Asian community," he said, "there must develop a broad and symphathetic understanding of each other's thinking problems and national objectives. Only with such understanding can we explore the common ground upon which a common economic, political, and a spiritual defense may be based and collective action undertaken. To achieve this understanding for ourselves and to encourage our neighbors to seek it is what motivates the current emphasis of our foreign policy," he added.

dency to put greater emphasis on the country's relations with Asian countries.

tries, "we are fulfilling our own concept of the role of each member of the free world community in its defense . . . . Our sovereign dignity," President Garcia said, "demands that we make every contribution within our competence to the arsenal of freedom."

The President denied that there has been any change in the foreign policy of the country, although, he pointed out, there is at present a tendency to put greater emphasis on the country's relations with Asian countries.

He warned that the very bedrock of the Asian way of life—the family—has been shattered by the communist doctrines.

He said that in the place of the family "has been imposed a fantastic militarized social system in which men and women, husbands and wives, live in separate barracks and eat in segregate mess halls, while their children are raised in state institution. No feudal despot, no imperialist conqueror, has ever dared attempt as complete an enslavement of a people," he warned.

President Garcia likewise recalled that the Southeast Asia Treaty Organization was conceived as the answer of Asian countries to "the challenge of naked military Red aggression against peoples and states."

He stressed that the communist military aggressions have been held at bay by the organization of the SEATO. However, he said that the communists have shifted their campaign to a policy of attraction cloaking the "tactic of deceit" described by Lenin as an orthodox element of Red policy.

December 19.—PRESIDENT Garcia instructed the members of the Philippine delegation to the world's basketball championship games in Chile to do their best and "bring home the bacon."

The PI cagers, accompanied by officials of the Philippine Amateur Athletic Federation, called on the President in Malacañang this morning to pay their respects, say farewell, and receive instructions.

The President told them, "My instructions are for you to bring home the bacon. I wish you a fruitful trip and victory in your forthcoming games. Our people will be proud if our flag will be upheld in the field of sports. Congratulations for your victory in the last Asian Games. God bless you all."

The members of the team who called on the President were Coach Virgilio Dalupan, Carlos Loyzaga, Loreto Carbonell, Emilio Achacoso, Geronimo Cruz, Constancio Ortiz, Ramon Manulat, Carlos Badion, Guillermo Baz, Edgardo Ocampo, Eduardo Lim, Kurt Bachmann, Mariano Tolentino, Roberto Yburan, and Alfonso Marquez.

Officials of the PAAF who accompanied the athletes were Antonio de las Alas, PAAF president, Sen. Ambrosio Padilla, Chito Calvo, Augusto Bautista, and Serafin Aquino, PAAF secretary-treasurer.

President Garcia presented the Philippine flag to Manuel B. Nolasco, assistant national boy scout commissioner and leader of the Philippine delegation to the 1959 Boy Scouts' Pan-Pacific Jamboree in Auckland, New Zealand.

Other members of the PI delegation to the jamboree are Ben Hur Lasam, scribe of Troop 21, Agusan Council, and Antonio Gonzales, junior assistant scoutmaster, Troop 310, Tarlac Council.

In presenting the flag to Nolasco, the President charged them with the duty of doing honor to it and wished them good luck in their mission.

Nolasco will go first to South Australia to undergo Wood Badge training, while the two scouts will remain in Melbourne where they will be the guests of the Australian boy scouts.

From Melborne, the delegation will proceed to Auckland, New Zealand, to attend the 1959 Boy Scouts' Pan-Pacific Jamboree.

They are leaving tomorrow night and expect to be away 28 days.

Members of the Japanese Collegiate All-Stars basketball team that have been playing a series of benefit games here for the 10th Boy Scouts' World Jamboree fund campaign were among the President's callers this morning.

The members of the team are Setsuo Nara, Hideo Kanekawa, Reijiro Kawamoto, Fusao Yokoyama, Kumiyasu Oshima, Seiji Yamamoto, Sigeyoshi Kashara, Kaoru Wakabayashi, Sadao Sugawara, Atenosake Kimura, Shohei Uozemi and Shoji Kamata. They were accompanied by Seiichi Morisawa, head; Masami Kase, coach; and Michihiko Kunehiro, cultural attache of the Japanese Embassy.

The visiting team is returning to Japan tomorrow after playing a series of five games in Manila. They will make their final appearance tonight against the formidable NCAA selection.

Agriculture Secretary Juan de G. Rodriguez and Rep. Luciano Millan of Pangasinan were among the first callers of the President today. They

took up with the Chief Executive matters pertaining to the functions and management of the Agricultural Tenancy Commission.

President Garcia also received Capt. and Mrs. Pat Bohling who were honored guests during the celebration of Philippine Aviation Week.

Capt. Bohling will be remembered as the intrepid flyer who established a world's record for a non-stop solo flight from Manila to Seattle aboard a light plane.

The American couple were accompanied by Col. Urbano Caldoza, CAA administrator, and Mike Campos, president of the Philippine Airmen's Association.

Brig. Gen. Pelagio Cruz, PC chief, called on the President to submit a report on the peace and order situation in the country which he described as "very good."

Maj. Constantino C. Navarro, deputy chief of the CIS, accompanied Gen. in his call on President Garcia.

President Garcia's last callers this morning were members of the board of directors of the Philippine Homesite and Housing Corporation with whom he conferred until almost 2 p.m.

PRESIDENT Garcia approved in principle a proposal to sell certain properties of the People's Homesite and Housing Corporation during a conference in Malacañang this morning with officials of the state housing firm.

The President's approval was given subject to the condition that the board submit a sound financing plan to insure the wise investment of the proceeds of the sales.

Present at the conference which was held in the President's study room were Manuel Leelin, Enrique J. L. Ruiz, Salud Parreño, Sergio Ortiz Luis, and Pedro Fernandez, members of the PHHC board of directors.

The sale of these properties was suggested as a means of enabling the PHHC to raise funds to finance the construction of low-cost houses for people in the low-income bracket in keeping with the Administration's program of social amelioration for the masses through shelter.

The PHHC officers told the President that a ranking official, without prior consultation with the board, had assured the employees of the government corporation that they would be given Christmas bonuses.

They said the board is not disposed to give bonuses this year because of the tight financial position of the PHHC. President Garcia backed their stand and cited a Cabinet resolution prohibiting losing government corporations from giving bonuses.

The President was also informed that they had stepped up their collections by holding project managers responsible for collecting the rentals of units in their respective areas.

They were told by the President to increase their earnings so that they could pay the amortization on their loan with the GSIS and secure the balance of their unreleased loan amounting to ₱11 million for the completion of their unfinished projects.

The PHHC directors suggested to the President that a reorganization of the firm be effected in order to cut down expenses and achieve maximum efficiency. They said the corporation is saddled with too many emergency employees resulting in an overlapping of duties and functions.

Director Ruiz showed President Garcia plans for a "core" house which he said would cost from ₱2,500 to ₱3,000 to build. It contains the minimum requirements for living and is designed to allow construction of additional rooms.

Ruiz also presented plans for a house built of local materials with an estimated construction cost of from ₱300 to ₱500 only. This type, Ruiz said, is easily within the reach of majority of the people, especially those in the rural areas.

PRESIDENT Garcia this afternoon challenged his critics to come forward with evidence and substantiate charges of influence peddling contained in the "white paper."

At his regular press conference—the last for the year—the President said he could not bet on charges which are based merely on "gossips and rumors."

He underscored his present campaign to weed out grafters when he launched his drive for a general "house-cleaning," but deplored the fact that those who raised charges could not present evidence to substantiate them.

Asked if Senate President Eulogio Rodriguez, Sr., who authored the "white paper" had submitted any evidence to substantiate charges of influence peddling involving men close to Malacañang, the President said: "Amang (Rodriguez) said he based his report merely on gossips and rumors and he could not prove them."

At his press conference, the President:

1. Reiterated his new policy to give greater emphasis on the country's relations with her Asian neighbors;

2. Justified the present budgetary imbalance;

3. Predicted a sweeping victory for the Nacionalista Party candidates in the coming elections;

4. Branded as "speculative" reports of an impending reshuffle in his Cabinet;

5. Disclosed he is still studying the administrative cases of National Treasurer Vicente Gella, Undersecretary of Finance Jose P. Trinidad, and Director of Animal Industry Laureano Marquez; and

6. Indicated that Miguel Cuaderno will stay as governor of the Central Bank.

Before answering newsmen's questions, the President said he was giving the last press conference for the year 1958, as he plans to go out of town next week.

He greeted the newsmen with a "Merry Christmas and a happy new year," for he said he may not be able to extend the season's wishes until after the next press conference next year.

He observed that the press has made it "hot for me during the year." and expressed the hope that he would get a "better temperature next year."

December 20.—THE President received members of the Presidential Fact-Finding Committee at a breakfast conference held this morning in his private residence on Bohol Avenue, Quezon City.

This morning's caucus marked the last day of existence of the Calinawan committee, as the President said he considered their work of going into the venalities in the Bureau of Customs as "finished." He thanked them for a job "well done."

Lt. Cmdr. Marcelino Calinawan, PFFC chairman, submitted a report of their achievements, findings, and recommendations and informed the President that each of them considered it an honor and a privilege to have been of service to the country.

He also pledged the "unstinted support and undying loyalty" of the members to the Administration and said he hoped that their efforts had contributed in some way to the realization of the Administration's goal of a clean and honest government.

THIS NOON, President and Mrs. Garcia motored to Baesa, Quezon City, to inspect the Damara Poultry Farm on the invitation of Don Andres Soriano, owner and operator of the farm.

The farm has an area of four hectares and is equipped with the latest in gadgets for producing and raising better breeds of fowls. It is used as a research center and a pilot project of the San Miguel Brewery, Inc.

The President evinced interest in the Chicktester which determines the sex of day-old chicks and which is reportedly 99 per cent accurate. Another machine on the farm is used for differentiating fertilized eggs from sterile ones.

After going around the farm, President and Mrs. Garcia took lunch with Don Andres Soriano, executives of the San Miguel Brewery, Inc., and their wives.

They motored back to their residence on Bohol Avenue after resting a while in a model barrio home built within the compound of the farm.

IN THE EVENING, the President received Lt. Gen. Alfonso Arellano, Armed Forces chief of staff, who called to press for the approval of his retirement. Gen. Arellano also took up with the President plans for the reorganization of the AFP general staff as a result of his retirement.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 322

PROVIDING INSTRUCTIONS TO BE FOLLOWED IN THE CONDUCT OF PUBLIC AFFAIRS DURING THE TIME THAT THE PRESIDENT IS OUTSIDE THE PHILIPPINES.

The following instructions are hereby issued for the conduct of public affairs during the absence of the President from the Philippines, on the occasion of his official visit to Japan from December 1, 1958, until he returns from abroad:

1. The President of the Philippines shall continue to exercise all the functions of his office as enjoined by the Constitution and the laws, in the same manner as when he is within the national territory. The Executive Secretary shall, as heretofore, sign all papers that are ordinarily signed by him or under the authority of the President.

2. Each Secretary of Department shall attend to and decide matters which pertain to his Department and which under the law he may decide. On those matters which require approval of the President, in case urgent action is needed, such approval shall be obtained by radio. On other departmental business which, although within the jurisdiction of a Secretary of Department, are of such importance as to affect the general policies of the Government and, therefore, should be the subject of consultation with the President, the Secretary concerned may communicate for such purpose with the President by radio or other convenient means of communication.

3. The Cabinet shall hold its regular meetings and shall meet at such other times as may be necessary. The Secretary of Finance shall preside over the meetings. Matters which have heretofore been acted upon by the Cabinet shall continue to be considered and decided by the Cabinet: *Provided, howver,* That in the absence of unanimity of opinion on any important question submitted, no decision shall be taken until it shall have been submitted to the President.

4. All official communications to the President, whether by letter or by radio, shall be transmitted through or by the Executive Secretary.

5. The Executive Secretary shall represent the President in social functions requiring the presence of the latter and shall preside over official ceremonies, receive and return the official calls of foreign dignitaries on behalf and in representation of the President, and on such occasions the Executive Secretary shall be entitled to the honors and courtesies due the President of the Philippines.

Done in the City of Manila, this 29th of November, in the year of Our Lord, nineteen hundred and fifty-eight and of the Independence of the Philippines, the thirteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 323

CREATING THE MUNICIPALITY OF TUKURAN IN THE PROVINCE OF ZAMBOANGA DEL SUR

Upon the recommendation of the Provincial Board of Zamboanga del Sur, and pursuant to the provisions of section sixty-eight of the Revised Administrative Code, the barrios of Tukuran, Luya, Tinotungan, Militar, and Tagolo and their respective sitios, all of the municipality of Labangan, province of Zamboanga del Sur, are hereby segregated from said municipality and organized into an independent municipality to be known as the municipality of Tukuran with the seat of government at the barrio of Tukuran.

The municipality of Tukuran as herein organized shall have the following boundaries:

"Beginning at Point 1, mouth of Bayao Creek, following its upstream course to point 2, a distance of 2,900 meters; thence to point 3, N51°–00'W a distance of 6,500 meters; thence to point 4, N69°–00'W a distance of 10,500 meters; thence due east to point 5, Intersection of Tukuran River and lat. 8°–00'N a distance of 3,700 meters; thence following the downstream course of Tukuran River to point 6, junction of Alegria Creek and Tukuran River, a distance of about 16,100 meters; thence to point 7, in a southeasterly direction

until it intersects the Aurora-Pagadian National Road at Km. 142, a distance of 3,700 meters; thence to point 8, S23°-00'E until it intersects the political boundary of the provinces of Zamboanga del Sur and Lanao, a distance of 5,400 meters; thence following the said political boundary in a southwesterly direction to the shoreline to point 9, a distance of 3,100 meters and thence following the shoreline back to point 1, mouth of Bayao Creek."

The municipality of Labangan shall have its present territory minus the portions thereof which are included in the municipality of Tukuran, as delimited above.

The municipality of Tukuran shall begin to exist upon the appointment and qualification of the mayor, vice-mayor, and a majority of the councilors thereof and upon the certification by the Secretary of Finance that said municipality is financially capable of implementing the provisions of the Minimum Wage Law and providing for all the statutory obligations and ordinary essential services of a regular municipality and that the mother municipality of Labangan, after the segregation therefrom of the territory comprised in the municipality of Tukuran, can still maintain creditably its municipal government and provide for the essential municipal services.

Done in the City of Manila, this 29th day of November, in the year of Our Lord, nineteen hundred and fifty-eight, and of the Independence of the Philippines, the thirteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 324

ANNEXING THE BARRIO OF TAWAGAN NORTE, MUNICIPALITY OF PAGADIAN, ZAMBOANGA DEL SUR, TO THE MUNICIPALITY OF LABAÑGAN, SAME PROVINCE

Upon the recommendation of the Provincial Board of Zamboanga del Sur, and pursuant to the provisions of section 68 of the Revised Administrative Code, the Barrio of Tawagan Norte, Municipality of Pagadian, is hereby annexed to the Municipality of Labañgan, same province.

The annexation herein made shall take effect on the same date that the new municipality of Tukuran, Province of Zamboanga del Sur, begins to exist.

Done in the City of Manila, this 29th day of November, in the year of Our Lord, nineteen hundred and fifty-eight, and of the Independence of the Philippines, the thirteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 325

AMENDING EXECUTIVE ORDER NO. 85, SERIES OF 1947, INSOFAR AS THE BOUNDARIES BETWEEN THE MUNICIPALITIES OF CALAMBA AND PLARIDEL, BOTH IN THE PROVINCE OF MISAMIS OCCIDENTAL ARE CONCERNED

Upon the recommendation of the Provincial Board of Misamis Occidental and pursuant to the provisions of section sixty-eight of the Revised Administrative Code, the boundaries between the municipality of Calamba and the municipality of Plaridel, both in the province of Misamis Occidental are hereby fixed as described below:

A straight line from the boundary of Baliangao and Plaridel, passing through the house of Calaljo at Bato, then to the house of Mrs. Maxima Ateniero de Taclob. From there it will go down straightly to Langaran River and follow its course upstream until the Bank of Sulipat River Daco. It will then follow the course of this river upstream until it will intersect the National Highway at Sulipat. From this point, it will follow the National Highway to Oroquieta until it will intersect the Dobuloc River, and from this point it will follow the course of the river upstream until the boundary line between Plaridel and Lopez Jaena will be met at Macalibre settlement." (As fixed and defined by the Provincial Board of Misamis Occidental in its Resolution Nos. 771 and 144, series of 1955 and 1957, respectively, in accordance with Resolution No. 59, series of 1947 of the Municipal Council of Plaridel, Misamis Occidental.)

This accordingly amends Executive Order No. 85, series of 1947, insofar as the boundaries between the municipality of Calamba and the municipality of Plaridel are concerned.

Done in the City of Manila, this 10th day of December, in the year of Our Lord, nineteen hundred and fifty-eight, and of the Independence of the Philippines, the thirteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Executive Office

PROVINCIAL CIRCULAR
(Unnumbered)

November 24, 1958

OFFICIAL TRAVELS OF PROVINCIAL AND CITY OFFICIALS USING GOVERNMENT MOTOR VEHICLES EXCLUSIVELY ASSIGNED TO THEM.

To all Provincial Governors and City Mayors:

It has been noted that excess travels incurred by provincial and city officials in the use of official vehicles exclusively assigned to them are due mostly to travels made outside of their respective jurisdictions. Executive Order No. 31, series of 1954, clearly specify that the travels or trips contemplated therein are those made for the purpose of supervision, inspection or investigation. Since trips outside the provinces or cities concerned cannot be connected with supervision, inspection or investigation, it is obvious that such trips if approved as on official business are not chargeable against that contemplated in said Executive Order and consequently must be charged against the appropriation for traveling expenses of the office concerned.

In this connection, attention is invited to a 4th indorsement dated April 12, 1956, of the Auditor General which reads in parts as follows:

"It appears that the excess of * * * traveled * * * during the month of * * * covers trips made within and outside of the * * * province * * *. Under Memorandum Circular No. 283 dated March 7, 1956 of this Office, official travels by officials entitled to transportation allowance under Executive Order No. 31, series of 1954, made outside of the province or city where they are assigned are not included in the allowance as said Executive Order No. 31 contemplates only official trips or travel made within the province or city where the official concerned is assigned and that trips made outside of the province or city or the jurisdiction of the official concerned will be allowed equivalent to the cost of first class public transportation."

Please be guided accordingly.

ENRIQUE C. QUEMA
Assistant Executive Secretary

Department of Justice

OFFICE OF THE SOLICITOR GENERAL

ADMINISTRATIVE ORDER NO. 172

December 3, 1958

DESIGNATING GUILLERMO E. TORRES AND ALEJANDRO E. SEBASTIAN TO CONDUCT A FORMAL INVESTIGATION OF THE ADMINISTRATIVE CHARGES FILED BY AND AGAINST ACTING DIRECTOR OF THE NATIONAL BUREAU OF INVESTIGATION, ET AL.

In the interest of the public service and pursuant to the provisions of Section 79(C) of the Revised Administrative Code, First Assistant Solicitor General, Guillermo E. Torres and Special Prosecutor Alejandro E. Sebastian are hereby designated to conduct a formal investigation of the administrative charges filed by and against Acting Director Jose C. Lukban of the National Bureau of Investigation (NBI), Assistant Director Natividad Z. de Castro of the same bureau, and NBI Agents Nos. 7, 14, 33, 55, 61, 65 and 80.

The above-named investigators shall conduct the investigation in on expeditious manner, avoiding unnecessary delays, and shall submit their report and recommendation immediately after the termination thereof.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER NO. 174

December 3, 1958

DESIGNATING JUSTICE OF THE PEACE JOSE LACHICA OF BUENAVISTA, AGUSAN, AS ACTING MUNICIPAL JUDGE OF BUTUAN CITY.

In the interest of the administration of Justice and pursuant to the provisions of Section 76 of

Republic Act 523, otherwise known as the Charter of the City of Butuan, Mr. Jose Lachica, Justice of the Peace of Buenavista, Agusan, is hereby designated Acting Municipal Judge of Butuan City, effective September 19 to 24, 1958.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 175

December 3, 1958

DESIGNATING ATTY. EDUARDO GARCERA AS SPECIAL COUNSEL TO ASSIST THE CITY ATTORNEY OF NAGA CITY.

In the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, Atty. Eduardo Garcera, Acting Law Clerk in the office of the City Attorney of Naga City, is hereby designated as Special Counsel to assist the City Attorney of Naga in the discharge of his duties, effective immediately and to continue until further orders, without additional compensation.

This cancels Administrative Order No. 70 of this Department, Series of 1958.

JESUS G. BARRERA
Secretary of Justice

Department of Commerce and Industry

SUGAR QUOTA ADMINISTRATION

PHILIPPINE SUGAR ORDER No. 6
Series 1958–1959

December 9, 1958

INCREASING THE DOMESTIC QUOTA FOR THE CROP YEAR 1958–59 TO 320,000 SHORT TONS AND ALSO INCREASING THE PERCENTAGE OF WEEKLY PRODUCTION FOR WHICH "B" QUEDAN-PERMITS MAY BE ISSUED.

Pursuant to the provisions of Act No. 4166, as amended by Commonwealth Acts Nos. 77, 323 and 584, and Republic Acts Nos. 279 and 1072 and of Republic Act No. 1825, and by virtue of the authority vested in me, it is hereby ordered that:

1. The total quota of domestic or "B" centrifugal sugar which may be manufactured during the crop year 1958–59 for consumption in the Philippines is hereby increased to 320,000 short tons, and for this purpose sub-sections (*a*), (*b*) and sub-paragraph (1) and (*c*) of section 2 of Philippine Sugar Order No. 1, Series 1958–59, dated October 3, 1958, are hereby amended to read as follows:

> 2. (*a*) There is allotted a total quota of "B" centrifugal sugar which may be manufactured during the crop year 1958-1959 for consumption in the Philippines, either in its original form or as processed sugar of (290,455) 320,000 short tons commercial weight.
>
> (*b*) Of this quota of (290,455) 320,000 short tons, commercial weight, 60 per cent thereof, or (174,273) 192,000 short tons, shall be allocated among plantation owners adherent to standard, marginal and sub-marginal mills as defined in Executive Order No. 901, dated October 30, 1935, and in the manner therein provided.
>
> (*c*) The remaining balance of the total domestic quota of (290,455) 320,000 short tons, after deducting 4,000 short tons which shall be set aside as amelioration allotment for sugarcane and sugar producers whose total allotment is less than 100 piculs, which remaining balance amounts to (112,182) 124,000 short tons, shall be allocated to new domestic quota planters (formerly known as emergency or non-quota planters), and old quota planters who had excess production in proportion to their production or excess production, as the case may be, during the 1948–1949 to the 1953–1954 crop years, whichever was the largest, as such productions or excess productions were verified and certified by the Sugar Quota Administration from the records of actual productions as provided in Philippine Sugar Order No. 9, Series 1953–1954, dated August, 16, 1954.

2. (*a*) To determine the domestic production allowance of regular quota planters as a result of the increase in the domestic quota, their respective domestic production coefficient is to be multiplied by the factor .208496482.

(*b*) To determine the additional domestic quota of regular planters with excess production and the domestic quota of new domestic quota planters, as a result of this increase in the domestic quota, their individual highest excess production or highest production as the case may be, is to be multiplied by the factor .208496482.

3. For the purpose of insuring supply of domestic sugar during the holiday season, the issuance of domestic quedan-permits during the months of November and December, the provision of paragraph 5 of PSO No. 1, Series 1958–59, dated October 3, 1958, to the contrary notwithstanding, shall be 20 per cent of the weekly production of mills and planters; *provided, however* that after January 1,

1959, the issuances of "B" quedan-permits shall be at the rate of 10 per cent of the weekly production as provided in paragraph 5 of PSO No. 1, Series 1958–59, dated October 3, 1958.

4. For the information of all mills and planters it is hereby announced that the domestic quota for the crop year 1959–1960 shall be 360,000 short tons, unless subsequent developments require adjustment of this quota.

R. L. PAGUIA
Administrator

Approved:

PEDRO C. HERNAEZ
Secretary of Commerce and Industry

APPOINTMENTS AND DESIGNATIONS

Ad Interim Appointments

December 1958

Antonio R. Avila as Justice of the Peace of Talacogon, Agusan, December 8.

Leovigildo Gotico as Justice of the Peace of San Jose, Nueva Ecija, December 10.

Mrs. Belen S. Bautista as Foreign Affairs Officer, Class II, and Consul of the Republic of the Philippines, December 11.

HISTORICAL PAPERS AND DOCUMENTS

PRESIDENT GARCIA'S SPEECH ON THE OPENING DAY OF THE CONFERENCE OF ASIAN UNIVERSITIES ON CULTURAL COOPERATION AT THE U. P. CONFERENCE HALL, DILIMAN, QUEZON CITY, MONDAY MORNING, DECEMBER 15, 1958

I AM highly honored and pleased to address this assembly of distinguished educators who have come from different parts of Asia in order to take common counsel on how the universities in this region may be made to do their part in fostering cultural cooperation in Asia. It is an honor because it is always a privilege to speak before a select audience like this, composed of illustrious members of the intellectual elite. And it is a pleasure because I I know that, in coming to this conference, I would be communing with learned scholars who are seriously engaged in man's eternal search for knowledge and truth.

As President of the Philippines I am gratified that this conference on higher education is being held in this university, thus affording my country and people an opportunity to play host to the eminent delegates of universities in this part of the globe. I hope our guests will find their sojourn in this country not only fruitful but also pleasant and satisfying.

It is well that the mentors of the youth in Asia should get together in an earnest endeavor to discover the possibilities for cultural cooperation and exchange among our respective countries. With a population of more than 360 million, the countries of eastern and southeastern Asia that belong to the community of free nations have great potentialities for making a valuable contribution to the enlightenment and progress of the world. Historians tell us that, as far as can be determined, civilization as we know it began in the Orient; that is, in the valleys of the Nile and the Tigris-Euphrates. It is also recorded that great civilizations have thrived in Malaysia, China, Korea, India, and Japan. Among these were the Sri-Vishayan and Madjapahit civilizations the influences of which are still felt in the Philippines to this day. I hope I would not be accused of indulging in wishful thinking if I say that the universities of Asia can do much to hasten the return of cultural preeminence to the Orient. At any rate, I am throwing the challenge to the intellectual leaders assembled here to bring about a renaissance of learning in Asia.

I need not tell you what you already know that one of the important functions of an institution of higher learning is the training of leaders who can safely steer the Ship of State and who can be called upon for counsel and guidance in times of stress. Some of the nations represented here are still in their infancy. Born in the throes of the last

war, these countries are still feeling their way in the world. A few have already reached or are about to reach political maturity. But young or old, all of them are still in the period of rapid growth. All of them are in the process of building, a task which requires strenuous effort and competent direction. And since the active life of an individual is subject to biological limitations, it is essential that the reservoir of leadership be replenished at all times. For in the life of a nation there is never a time when enlightened leadership is not needed to chart the course of its progress.

But I venture to say that the heavy demands on the leader's wisdom and resourcefulness in this age of the atom and outer space conquest require a well-balanced education involving all powers of the individual—intellectual, physical, aesthetic, and spiriual. The modern leader must have the mental acumen to comprehend the import of the vast sweep of science and technology across the centuries, the physical stamina to withstand the rigors of modern living, the aesthetic sensibility to appreciate the beauty of the universe as well as the beauty of the human thoughts and ideas recorded in stone, on canvas, and on the printed page, and the spiritual insight to realize the sustaining strength of faith in the Supreme Ruler, who holds the destinies of nations in the hollow of His palm.

And so, I repeat, training for leadership must make provision for culture. But what is culture? What constitutes the culture of a people? Different thinkers understand the term in different ways according to their educational background. However, I shall at this moment take the view of the anthropologist and define culture as the sum total of the social institutions and ways of living and acting which have been generally accepted by the people. Included in this concept are the laws, customs, music, art, literature, and the aggregate of the creations, material as well as non-material, of the group.

Since culture is the product of man's ceaseless effort to adjust himself to his physical and social environment, it is only natural to expect that the culture of nations will vary, it being a fact that in the nature of things the environment of people differs in different countries. Furthermore, the impact of one culture upon another in the course of conquest and colonization must result in a modification of the culture and culture patterns of the colonized. And since the inscrutable hand of Destiny has placed most of our countries under the influence of colonizing powers for centuries, it is not to be wondered at that our cultures have developed along different lines. In so far as the Philippines is concerned, she has superimposed upon her autochthonous Malayan culture the culture of such countries in the Far East as China, Japan, and India and at the same time has taken on the Latin culture which she received from Spain and the

Anglo-Saxon culture which came to her through her contact with the United States. Influenced by these two cultures of the West, our resultant culture has differed considerably from those of the other countries in Asia.

But in a way of speaking, this diversity is a blessing in disguise, for it makes the exchange of culture among our respective countries highly beneficial and fruitful. Because of this diversity every country has something to give to the other countries. Therefore, cultural cooperation among these countries is more desirable. In this way, we can move progressively toward the enrichment of one another's cultural legacy. And in these days of increasing tension which in some countries threatens to develop into a conflagration, the consequences of which can only be imagined but not fully grasped, cooperation among nations in the field of culture will go a long way toward bringing about mutual understanding and friendship among them.

As a first step in this direction, the University of the Philippines established a few years ago, with the assistance of the Asia Foundation, the Institute of Asian Studies for students who desire to know about the culture of the Philippines and the neighboring countries. It is to be deplored that in spite of the geographical proximity of our countries and the racial affinity of our peoples, we have been almost total strangers to one another. It is our hope that through this institute we shall come to know one another better so that together we can make our contribution to the culture of the world.

It is a matter for congratulation that on the occasion of the Golden Jubilee of the University of the Philippines this conference of Asian universities is being held, for it will provide a splendid opportunity for the heads of universities and professors to put their heads together in the consideration of the important problem of cultural cooperation. It is my hope and wish that your deliberations will be attended with success and will be characterized by a sincere desire to foster international understanding and friendship.

The late English historian H. G. Wells, in his book, *Outline of History,* characterized human history as a race between education and catastrophe. We are witnesses to the fact that, in two world wars which were only less than three decades apart, education almost lost and that we came close to the brink of catastrophe. Humanity fervently prays that it be saved from the horrors of a third holocaust which may spell the end of our civilization. The educators of the world are the hope of the human race. Upon your shoulders rests the responsibility of strengthening the cause of peace by spreading culture as a unifying force in building the defenses of peace in the minds of men.

SPEECH OF PRESIDENT GARCIA FORMALLY LAUNCHING THE CANCER SOCIETY FUND DRIVE IN CEREMONY HELD AT THE SOCIAL HALL IN MALACAÑANG MONDAY AFTERNOON, DECEMBER 15, 1958

THROUGH the centures of human history, one of the most horrible and mysterious of the dread scourges of mankind has been cancer.

Although the disease has become recognized and investigated scientifically only over the past few decades, there is evidence showing that cancer existed even in the ancient civiliziations of the world.

Today, mankind has massed itself in a drive against its common enemy. In the United States, Europe, and the enlightened parts of Asia, cancer is being pushed back by progressive public health programs primarily designed to detect and treat the disease during its early and curable stages.

Because of the fact that we do not know the real cause of the disease, the efforts of the Philippine anti-cancer groups have been directed to detection and preventive treatments. Again, because of lack of funds, our own technical men have been unable to go into the actual and expensive research on the causes of, and new treatments for, cancer.

We are very much gratified to note that here in the Philippines, the citizenry has not lent deaf ears to the call of duty in the fight against cancer.

The establishment of the Philippine Cancer Society two years ago marked a milestone in the country's fight against the effects of the disease. It was a manifestation of the fact that Filipinos will band together, give generously of their talents, time, and money to fight a common enemy that is killing hundreds of thousands annually.

The construction of the first cancer detection center by the Philippine Cancer Society is undoubtedly one of the important battles won in the fight against the disease in the Philippines.

The government, on its part, has not been idle. The Reorganization Act for the Department of Health which I certified for implementation provides for the creation of a Division of Cancer Control which, we all anticipate, will go a long way toward achieving a concerted action against the plagues of cancer.

The activation of the cancer control division of the department will be able to do much, I am sure, in fighting the disease and will furthermore be instrumental in the saving of many lives.

The cooperation and unity of purpose manifested in the work of the Philippine Cancer Society and the health department is entirely in keeping with the modern concept of progressive government. It reflects the attitude that joint participation of both the government and the responsible

and generous members of the community is essential to any successful large-scale and long-range undertaking.

I therefore call on every Filipino to contribute generously to the country's war against this disease, realizing that every peso given may save the life of a fellow-Filipino.

I congratulate the Philippine Cancer Society for the work it has done. . . . and done well. I hope that it will carry on its humanitarian efforts boldly, encouraged by the support and generosity of the average Filipino citizen.

It is my privilege to present my personal contribution today to the third Philippine Cancer Drive.

DECISIONS OF THE SUPREME COURT

[No. L-10845. April 28, 1958]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* AMBROSIO LUCERO, defendant and appellant

CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARM; EXEMPTION FROM CRIMINAL LIABILITY; CASE AT BAR.—Defendant-appellant was duly appointed a civilian confidential agent entrusted with "a mission to make surveillance and effect the killing or capture of a Huk commander." To carry out said mission, he was authorized to carry a revolver. *Held:* As the grant for the temporary use of the revolver to defendant-appellant was a necessary means to carry out a lawful purpose and within the limits of the law, and the use thereof was not expressly confined to a limited area, defendant-appellant is exempt from criminal liability for illegal possession of firearm.

APPEAL from a judgment of the Court of First Instance of Rizal. Tan, *J.*

The facts are stated in the opinion of the Court.

Serafin F. Fuentes for defendant and appellant.

Assistant Solicitor General Jaime de los Angeles and *Solicitor Juan T. Alano* for the plaintiff and appellee.

LABRADOR, *J.:*

Appeal from a judgment of the Court of First Instance of Rizal, Hon. Bienvenido Tan, presiding, finding Ambrosio Lucero guilty of illegal possession of firearm and sentencing him accordingly. The appeal was certified to this Court by the Court of Appeals for the reason that only questions of law are raised therein.

On January 6, 1953, Severino F. de Jesus, 1st Lt. Inf., Team Leader, 7 MISAT, issued a certificate in favor of defendant-appellant, civilian confidential agent, worded as follows:

"REPUBLIC OF THE PHILIPPINES
HEADQUARTERS
20TH BATTALION COMBAT TEAM, IMA (AFP)
CAMP OLIVEROS, PLARIDEL, BULACAN
7th MIS "A" TEAM

6 January 1953

TO WHOM IT MAY CONCERN:

This is to certify that Mr. Ambrosio Lucero, a resident of Barrio Liputan, Meycauayan, Bulacan is a civilian confidential agent assigned on a mission to make surveillance and effect the killing or capture of Angel Aviso *alias* Cmdr MORI, who was frequently reported as visiting his relative in Barrio Malhalan, Meycauayan.

He is authorized to use temporarily the confiscated revolver cal. 38, serial number 43831 in the performance of his assigned mission.

SEVERINO F DE JESUS
1st Lt., Inf
Team Leader, 7MISAT"

(Exhibit "1")

Ambrosio Lucero had been appointed confidential informer and been given an identification card, as Agent No. 2331, by the Battalion Commander, 7th Battalion Combat Team. The identification card reads as follows:

"REPUBLIC OF THE PHILIPPINES
ANTIPOLO, RIZAL
SEVENTH BATTALION COMBAT TEAM
Agent No. 2331—
A. L.

Initial
Informer

Designation

PEDRO C. BERSOLA
Major, Inf.

ILLEGIBLE
Intelligence Officer

BN Commander"

Exhibit "2").

On February 7, 1953, the defendant-appellant was caught in the Municipality of Navotas, Rizal, in possession of the revolver which had been delivered to him. So on April 28, 1953, an information for illegal possession of firearm was filed in the Court of First Instance of Rizal against him. At the trial of the case the defendant-appellant admitted having been arrested in Navotas on February 7, 1953, but through counsel explained the possession of the firearm in the following manner:

"ATTY. FINEZA:

Here are the facts the defense is willing to admit: That on January 6, 1953 the accused was commissioned by Lt. Severino F. de Jesus, Assistant Intelligence Officer of the 20th B.C.T. stationed at Camp Olivas, to effect the capture of Angel Biso *alias* Commander Mori; that in the performance of this mission the accused Ambrosio Lucero was temporarily given the use of revolver, caliber .38, Serial No. 43831 in connection with the performance of the said mission; that the said authority to temporarily use the said revolver is evidenced by this authority which we present as Exhibit 1 for the defense." (pp. 1–2, t.s.n.)

On this admission the court found him guilty of illegal possession of firearm and sentenced him accordingly. The court also declared the firearm confiscated and forfeited in favor of the government.

From the above decision the defendant has appealed to this Court, claiming exemption from criminal liability because of his appointment as civilian confidential agent, entrusted with "a mission to make surveillance and effect the killing or capture of Angel Aviso *alias* Comdr. Mori", a Huk commander; that the firearm was given to him for a lawful purpose and within the limits of the law and the use thereof was not expressly confined to a limited area. Answering the above contention, the Solicitor Gen-

eral argues that the defendant-appellant was merely a "*civilian* confidential agent", and that the lieutenant who issued the appointment is not authorized under the law to grant said defendant-appellant authority to possess the firearm, this power being granted under the provisions of Sections 887 and 888 of the Revised Administrative Code to the President of the Philippines.

This Court can take judicial notice of the fact that the practice of appointing civilians as informers to help in the apprehension and arrest of Huks has been resorted to many times with success. If a police officer in effecting arrest or in complying with his official duties can enlist the aid of civilians, so should officers of the Army entrusted with the capture or apprehension of Huks. The designation and appointment of the defendant-appellant as informer by the Battalion commander was, therefore, within the latter's lawful authority. It cannot be denied that the help expected from a civilian informer would not be as effective as when he is provided with the necessary weapon to defend himself in case of aggression or enforce capture of offenders or criminals as in the case of the defendant-appellant. The right of the military commander entrusted with the duty of effecting the arrest or capture of a Huk commander should necessarily include, besides the appointment of the civilian informer, the power to provide the latter with such weapons as are necessary to protect the informer and help him carry out the mission entrusted to him. Under the circumstances of the case, therefore, we find that the granting of the temporary use of the revolver to defendant-appellant, which was a necessary means to carry out the lawful purpose of the commander, must be deemed incident to or necessarily included in the duty and power of the battalion commander to effect the capture of the Huk chief. If the government has entrusted military officers with the capture and apprehension of offenders, we must presume that they have authority to employ such means as are necessary, convenient and useful in the accomplishment of their trust. We, therefore, find that the contention of the appellant is well-founded.

The case cited by the court *a quo* of conviction of an employee of the Surplus Property Commission for illegal possession of firearm, which possession was authorized by the Chairman of the Commission, has not been decided by this Court. The contention of the Solicitor General that the law which should apply to the case at bar are Sections 887 and 888 of the Revised Administrative Code is beside the point; said provisions refer to possession of firearms by private persons for personal use, and not to a license for the temporary use of a firearm for the purpose of effecting the capture and apprehension of per-

sons engaged in an uprising against the government, as are the Huks.

For the foregoing considerations, the judgment appealed from is hereby reversed and the defendant-appellant acquitted of the offense charged. With costs *de oficio*.

Bengzon, Montemayor, Bautista Angelo, Endencia and *Félix, JJ.*, concur.

Reyes, A., J., concurs in the result.

Concepcion, J., reserves his vote.

REYES, J. B. L., *J.*, dissenting:

I can not assent to the majority ruling, for the reason that a mission entrusted by a military commander to a civilian secret agent "to effect the killing" of "Angel Aviso, *alias* Comdr. Mori" is, in my opinion, patently illegal, and can not constitute valid authority for bearing firearms. While Commander Mori may be a rebel, no one may validly authorize another to procure his killing without due process. It would be authority to commit murder.

Parás, C. J.: I concur in this dissent.

Judgment reversed.

[No. L-9510. October 31, 1957]

CIRILO ABRASIA, Register of Deeds, petitioner and appellee, *vs.* GREGORIO CARIAN, oppositor and appellant

SETTLEMENT OF ESTATE OF DECEASED PERSONS; PRESUMPTION WHERE CREDITORS FAILED TO FILE CLAIM WITHIN TWO YEARS FROM DEATH; PARTIES ENTITLED TO RELIEF.—Considering that none of the creditors has complained against the issuance of the transfer certificate of title in question in favor of the oppositor-appellant, or deemed it fit to intervene in the case for the cancellation of said title, there is every reason to believe that their respective claims must have been fully settled. What is more, section 1 of Rule 74 of the Rules of Court explicitly provides that it shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two years after the death of the decedent, and no such petition has ever been filed. In any event, insofar as said transfer certificate of title may be injurious to their interest, said creditors, if any, are the only parties who could possibly seek a relief against the issuance thereof. The register of deeds has no cause of action therefor.

APPEAL from an order of the Court of First Instance of Negros Occidental. Teodoro, *J.*

The facts are stated in the opinion of the Court.

Cirilo Abrasia for and in his own behalf.

Juan S. Aritao for oppositor and appellant.

Amado Parreño for the administrator of the estate of Guillermo Nombre.

CONCEPCIÓN, *J.:*

This is an appeal from an order of the Court of First Instance of Negros Occidental.

It appears that Lots 1617, 1355, 1949, 1921, 1516, 1613, 1614 and 1616 of Cadastral Survey of Kabankalan, Negros Occidental, were registered, under the Torrens system, in the name of the spouses Guillermo Nombre and Victoriana Carian *alias* Victoria Carian, and belonged to their conjugal partnership. Upon the death of Guillermo Nombre, who was not survived by descendants or ascendants, some of his collateral relatives instituted Civil Case No. 6936 of the Court of First Instance of Negros Occidental, against his widow Victoriana Carian and other collateral relatives of said deceased. On March 9, 1937, decision was rendered in said case pursuant to a compromise agreement between the parties therein. It was stipulated in this agreement that said eight (8) lots belonged to the aforementioned conjugal partnership; that Guillermo Nombre and Victoriana Carian were each entitled to one-half *pro-indiviso* of said lots, with the improvements thereon; that Guillermo Nombre had died intestate; that his only heirs were his widow, Victoriana Carian, and his aforementioned collateral relatives; that these heirs of Guillermo Nombre assumed the obligation to pay his debts, aggregating ₱775,

as well as the corresponding inheritance tax, all of which shall be taken from his share of the conjugal partnership; that Victoriana Carian shall redeem two (2) properties mortgaged by her, one to Januario Rivas, and another to Ruperto Loberas; that, during her lifetime, Victoriana Carian shall be entitled to the use and possession of Lot No. 1617, by virtue of her usufructuary right, as widow of Guillermo Nombre, and in satisfaction thereof; that, as soon as the decision shall become final, the properties of the conjugal partnership would be divided into two (2) equal parts, one of which shall belong to Victoriana Carian, and the other to the heirs of Guillermo Nombre; that the latter shall pay Victoriana Carian the aforementioned sum of ₱775, without interest, within one (1) year; that to secure such payment, said heirs of Guillermo Nombre mortgaged their rights and interest over his share in the aforementioned conjugal partnership; and that both parties shall bear, share and share alike, the obligation to satisfy the unpaid land taxes on the properties above mentioned.

Almost fifteen (15) years later, or on January 8, 1952, Gregorio Carian made a sworn "declaration of heirship" stating that Victoriana Carian had died intestate on May 9, 1938, leaving no debts or obligations of any kind whatsoever, and that he is her nephew and only heir, he being the son of her only brother, Jacinto Carian, and asking the register of deeds of Negros Occidental to issue, in his (Gregorio Carian's) name, the certificates of title corresponding to the share of Victoriana Carian in the conjugal partnership above referred to and covered by the decision in said Civil Case No. 6936.

Copy of this decision and said declaration of heirship were, on January 15, 1952, filed with the office of the register of deeds of Negros Occidental, which, thereafter, cancelled Original Certificate of Title No. 21625 (RO–1634)—covering Lot No. 1516—and issued, in lieu thereof, Transfer Certificate of Title No. T–9084 "unto Gregorio Carian." Three (3) years later, or on March 21, 1955, Cirilo Abrasia, the register of deeds of Negros Occidental, filed with the Court of First Instance of Negros Occidental—in the cadastral case covering said lot—a petition stating that the decision in Civil Case No. 6936 had been "improperly registered because the same was not confirmed by the cadastral court nor was there a motion ever filed in a cadastral court for the purpose of having said decision confirmed by the cadastral court", that "through this oversight and mistake of law", the office of said register of deeds had erroneously cancelled the aforementioned Original Certificate of Title No. 21625 and issued, in lieu thereof, said Transfer Certificate of Title No. T–9084, and that the mistake thus committed was

"jurisdictional" in nature, and praying for authority to cancel this transfer certificate of title, "as of no value and legal effect, thereby reinstating" said Original Certificate of Title No. 21625 (RO–1634). By an order, dated April 2, 1955, this petition was granted by the Court of First Instance of Negros Occidental. On April 27, 1955, Gregorio Carian filed a motion for reconsideration of said order, which was opposed by the heirs of Guillermo Nombre, on May 13, 1955, and by the register of deeds, on May 20, 1955. Soon, thereafter, or on May 20, 1955, said motion for reconsideration was denied. Hence, the present appeal taken by Gregorio Carian.

Herein appellee, the Register of Deeds of Negros Occidental, has not filed a brief, he having chosen to rely on the order appealed from, which, in turn, merely makes reference to the reasons stated in appellee's petition and to a "manifestation" made by him "in open court," which is not described, however, either in said order, or elsewhere in the record on appeal now before Us. However, the unverified opposition, filed by the heirs of Guillermo Nombre, to the motion for reconsideration of appellant herein, suggests that appellee's petition and the order appealed from were seemingly predicated upon the following grounds, namely: (1) that Victoriana Carian had left unpaid debts; and (2) that the decision in Civil Case No. 6936 can not properly be registered without previous confirmation by the cadastral court.

With respect to the first ground, the record before Us does not show that Victoriana Carian had any unpaid debts. Indeed, no allegation to this effect was made in appellee's petition of March 21, 1955, and no evidence has ever been taken in connection therewith, either before or after said petition was granted. However, said opposition to the motion for reconsideration cites the debts specified in the decision and in the compromise agreement in Civil Case No. 6936, and the sums of ₱1,200 and ₱2,000 allegedly due, respectively, to Eugenia Gargalicano and Crisostomo Abdin, from Victoriana Carian, at the time of her death on May 9, 1938.

It is important to note, in this connection, that the order appealed from was issued on April 2, 1955, or about seventeen (17) years later, and over eighteen (18) years since the rendition of the aforementioned decision. In the absence of proof to the contrary—and there is none to this effect—we must presume, therefore, that the cause of action of the creditors of Guillermo Nombre and Victoriana Carian had prescribed long ago. In fact, considering that none of those creditors has complained against the issuance of Transfer Certificate of Title No. T–9084, in favor of Gregorio Carian, in 1952, or deemed it fit to intervene in the present case, there is every reason to believe that

their respective claims must have been fully settled. What is more, section 1 of Rule 74 of the Rules of Court explicitly provides that "it shall be presumed that the decedent left no debts if *no creditor* files a petition for letters of administration within two (2) years after the death of the decedent," and no such petition has ever been filed. In any event, insofar as said transfer certificate of title may be injurious to their interest, said creditors, if any, are the only parties who could possibly seek a relief against the issuance thereof. Neither the register of deeds nor the heirs of Guillermo Nombre have a cause of action therefor.

Moreover, it appears that, after the issuance of Transfer Certificate of Title No. T–9084, Lot No. 1516, covered by the same, had become the subject-matter of a deed of lease executed—presumably by Gregorio Carian—in favor of one Espiridion Presbitero and duly filed with the office of the register of deeds, as well as annotated on the back of said transfer certificate of title. The cancellation of this title would affect the rights of said lessee, who has not been heard, or given an opportunity to be heard, prior to the issuance of the order appealed from.

Apart from the foregoing, neither the appellee nor the lower court has cited, and we are not aware of, any legal provision or authority in favor of the theory that the decision in Civil Case No. 6936 can not be registered and cannot justify the cancellation of Original Certificate of Title No. 21625 (RO–1634) and the issuance of Transfer Certificate of Title No. T–9084, without previous confirmation by the cadastral court.

In view of the foregoing, the order appealed from should be, as it is hereby, set aside and reversed, without special pronouncement as to costs.

IT IS SO ORDERED.

Parás, C. J., Bengzon, Padilla, Montemayor, Reyes, A. Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and *Félix, JJ.*, concur.

Order set aside and reversed.

[No. L-11229. March 29, 1958]

MANUEL DIAZ, CONSTANCIA DIAZ and SOR PETRA DÍAZ, plaintiffs and appellants, *vs.* CARMEN GORRICHO and her HUSBAND FRANCISCO AGUADO, defendants and appellees.

1. TRUST AND TRUSTEES; EXPRESS TRUSTS AND CONSTRUCTIVE TRUSTS DISTINGUISHED.—Express trusts are created by intention of the parties, while implied or constructive trust are exclusively created by law, the latter not being trusts in their technical sense (Gayondato *vs.* Insular Treasurer, 49 Phil. 244.)

2. ID.; ADVERSE POSSESSION DO NOT APPLY TO CONTINUING AND SUBSISTING TRUSTS; LACHES BARS ACTIONS TO ENFORCE CONSTRUCTIVE TRUSTS.—The express trusts disable the trustee from acquiring for his own benefit the property committed to his management or custody, at least while he does not openly repudiate the trust, and makes such repudiation known to the beneficiary or *cestui que trust.* For this reason, the old Code of Civil Procedure (Act 190) declared that the rules on adverse possession do not apply to "continuing and subsisting" (i.e, unrepudiated) trusts. But in constructive trusts, the rule is that laches constitute a bar to actions to enforce the trusts, and repudiation is not required, unless there is concealment of the facts giving rise to the trust.

3. ID.; ID.; ID.—In express trusts, the delay of the beneficiary is directly attributable to the trustee who undertake to hold the property for the former, or who is linked to the beneficiary by confidential or fiduciary relations. The trustee's possession is, therefore, not adverse to the beneficiary, until and unless the latter is made aware that the trust has been repudiated. But in constructive trusts (that are imposed by law) there is neither promise nor fiduciary relation; the so-called trustee does not recognize any trust and has no intent to hold for the beneficiary; therefore, the latter is not justified in delaying action to recover his property. It is his fault if he delays; hence, he may be estopped by his own laches.

4. ID.; ID.; ESTOPPEL BY LACHES.—One who invokes the equitable doctrine of estoppel by laches must show not only unjustified inaction but also some unfair injury would result to him unless the action is held barred.

5. LIMITATION OF ACTION; ACTION TO ATTACK SHERIFF'S DEED AND CANCEL TRANSFER CERTIFICATE OF TITLE; CASE AT BAR.—Where the appellants' cause of action to attack the sheriff's deed and cancel the transfer certificates of title issued to the appellees accrued from the year of their issuance and recording, 1937, and appellants have allowed fifteen (15) years to elapse before taking remedial action in 1952, more than sufficient time (thirteen years) has been allowed to elapse to extinguish appellant's action, in view of the appellees' public assertion of title during this entire period. Under the old Code of Civil Procedure (Ch. III) in force at the time, the longest period of extinctive prescription was only ten years.

APPEAL from a judgment of the Court of First Instance of Nueva Ecija. Leuterio, *J.*

The facts are stated in the opinion of the Court.

Pedro D. Maldía for plaintiffs and appellants.

Leoncio M. Aranda for defendants and appellees.

REYES, J. B. L., *J.*:

Appeal originally brought to the Court of Appeals but certified to us by said court because only questions of law are raised therein.

The facts of the case are as follows:

Lots Nos. 1941 and 3073 of the Cadastral Survey of Cabanatuan originally belonged to the conjugal partnership of the spouses Francisco Diaz and Maria Sevilla, having been registered in their name under Original Certificates of Title Nos. 3114 and 3396. Francisco Diaz died in 1919, survived by his widow Maria Sevilla and their three children—Manuel Diaz born in 1911, Lolita Diaz born in 1913, and Constancia Diaz born in 1918.

Sometime in 1935, appellee Carmen J. Gorricho filed an action against Maria Sevilla in the Court of First Instance of Manila (C. C. No. 43474) and in connection therewith, a writ of attachment was issued upon the shares of Maria Sevilla in said lots numbers 1941 and 3073 (Exhibit C). Thereafter, said parcels were sold at public auction and purchased by the plaintiff herself, Carmen J. Gorricho (Exhibit G). Maria Sevilla failed to redeem within one year, whereupon the acting provincial Sheriff executed a final deed of sale in favor of Carmen J. Gorricho. In said final deed (Exhibit E), however, the sheriff conveyed to Gorricho the whole of parcels numbers 1941 and 3073 instead of only the half-interest of Maria Sevilla therein. Pursuant to said deed, Carmen J. Gorricho obtained Transfer Certificate of Title Nos. 1354 and 1355 in her name on April 13, 1937, and has been possessing said lands as owner ever since.

In November, 1951, Maria Sevilla died. The following year, on March 31, 1952, her children Manuel Diaz, Constancia Diaz, and Sor Petra Diaz (Lolita Diaz) filed the prsent action (C. C. No. 926 of the Court of First Instance of Nueva Ecija) against Carmen Gorricho and her husband Francisco Aguado to compel defendants to execute in their favor a deed of reconveyance over an undivided one-half interest over the lots in question (the share therein of their deceased father Francisco Diaz illegally conveyed by the provincial sheriff to Gorricho), which defendants were allegedly holding in trust for them. Defendants answered denying the allegations of the complaint and alleging, as a special defense, that plaintiffs' action has long prescribed. After trial, the court below rendered judgment, holding that while a constructive trust in plaintiffs' favor arose when defendant Gorricho took advantage of the error of the provincial sheriff in conveying to her the whole of the parcels in question and obtained title in herself, the action of plaintiffs was, however, barred by laches and prescription. From this judgment, plaintiffs appealed.

The prinicpal contention of appellants is that their father's half of the disputed property was acquired by Carmen J. Gorricho through an error of the provincial sheriff; that having been acquired through error, it was subject to an implied trust, as provided by Article 1456 of the new Civil Code; and therefore, since the trust is continuing and subsisting, the appellants may compel reconveyance of the property despite the lapse of time, specially because prescription does not run against titles registered under Act 496.

Article 1456 of the new Civil Code, while not retroactive in character, merely expresses a rule already recognized by our courts prior to the Code's promulgation (see Gayondato *vs.* Insular Treasurer, 49 Phil. 244). Appellants are, however, in error in believing that like express trusts, such constructive trusts may not be barred by lapse of time. The American law on trusts has always maintained a distinction between express trusts created by intention of the parties, and the implied or constructive trusts that are exclusively created by law, the latter not being trusts in their technical sense (Gayondato *vs.* Insular Treasurer, *supra*). The express trusts disable the trustee from acquiring for his own benefit the property committed to his management or custody, at least while he does not openly repudiate the trust, and makes such repudiation known to the beneficiary or *cestui que trust.* For this reason, the old Code of Civil Procedure (Act 190) declared that the rules on adverse possession do not apply to "continuing and subsisting" (i.e., unrepudiated) trusts.

But in constructive trusts, as pointed out by the court below, the rule is that laches constitutes a bar to actions to enforce the trust, and repudiation is not required, unless there is concealment of the facts giving rise to the trust (54 Am. Jur., secs. 580, 581; 65 C. J., secs. 956, 957, 958; Amer. Law Institute, Restatement on Trusts, section 219; on Restitution, section 179; Stianson *vs.* Stianson, 6 ALR 287; Claridad *vs.* Benares, G. R. No. L–6438, June 30, 1955).

"SEC. 580. *In Case of Express Trust.*—In the case of an express trust, a cestui que trust is entitled to rely upon the fidelity of the trustee. Laches does not apply until the lapse of time is great, or until the active duties of the trustee are terminated except for turning over the trust property or funds to the beneficiaries, the claim of the trustee in respect of the trust estate is held adversely to the beneficiary, the trustee openly denies or repudiates the trust or commits acts in breach thereof, or in hostility to, or fraud of, the beneficiaries, and the beneficiary is notified, or is chargeable with constructive notice, thereof, or is otherwise plainly put on guard against the trustee. No laches exists until a reasonable time after a beneficiary is notified of a breach or other cause of suit against the trustee. Laches does exist, however, where suit is not commenced within such reasonable time. Long delay is not excused where the trustee put the beneficiary off from time to time with a

promise to settle the trusteeship, or where the trustee was a lawyer and related by affinity to the benficiaries, who were all women."

"SEC. 581. *In case of Constructive or Resulting Trust.*—Laches constitutes a defense to a suit to declare and enforce a constructive trust, and for the purpose of the rule, repudiation of the constructive trust is not required, and time runs from the moment that the law creates the trust, which is the time when the cause of action arises. But laches does not exist while the trustee fraudulently and sucessfully conceals the facts giving rise to the trust, although the concealment must be adequately pleaded by the plaintiff in a suit to declare a trust where the delay is apparent on the face of his pleading.

Laches may constitute a bar to an action to declare and enforce a resulting trust, but lapse of time is only one of the many circumstances from which the conclusion of laches in the enforcement of such a trust must be drawn, and each case must be determined in the light of the particular facts shown. No laches exists in respect of failure to assert a resulting trust of which a beneficiary has no knowledge or of which he is not chargeable with knowledge. Continuous recognition of a resulting trust precludes any defense of laches in a suit to declare and enforce the trust. It has been held that the beneficiary of a resulting trust may, without prejudice to his right to enforce the trust, prefer the trust to persist and demand no conveyance from the trustee. On the other hand, it has been held that the one who permits a claim to establish a resulting trust to lie dormant for an unreasonable length of time, and until the alleged trustee has died, will not be aided by a court of equity to establish his trust." (54 Am. Jur., pp. 448–450.)

The reason for the difference in treatment is obvious. In express trusts, the delay of the beneficiary is directly attributable to the trustee who undertakes to hold the property for the former, or who is linked to the beneficiary by confidential or fiduciary relations. The trustee's possession is, therefore, not adverse to the beneficiary, until and unless the latter is made aware that the trust has been repudiated. But in constructive trusts (that are imposed by law), there is neither promise nor fiduciary relation; the so-called trustee does not recognize any trust and has no intent to hold for the beneficiary; therefore, the latter is not justified in delaying action to recover his property. It is his fault if he delays; hence, he may be estopped by his own laches.

Of course, the equitable doctrine of estoppel by laches requires that the one invoking it must show, not only the unjustified inaction, but that some unfair injury would result to him unless the action is held barred (Go Chi Gun *vs.* Co Cho, L–5208, February 28, 1955; Mejia *vs.* Gamponia, 53 Off. Gaz. 677). This requirement the appellees have not met, and they are thereby bereft of the protection of this rule.

Nevertheless, we are of the opinion that the judgment of dismissal should be upheld, because the appellants' cause of action to attack the sheriff's deed and cancel the transfer certificates of title issued to the appellees accrued from the year of issuance and recording, 1937,

and appellants have allowed fifteen (15) years to elapse before taking remedial action in 1952. Even considering that the youngest among them (Constancia), born in 1918, only became of age in 1939, more than sufficient time (thirteen years) has been allowed to elapse, notwithstanding the appellees' public assertion of title during this entire period, to extinguish appellants' action. Under the old Code of Civil Procedure (Ch. III), in force at the time, the longest period of extinctive prescription was only ten years.

WHEREFORE, the judgment appealed from is affirmed, with costs against appellants.

Parás, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Concepcion, Endencia, and *Félix, JJ.*, concur.

Bautista Angelo, J., concurs in the result.

Judgment affirmed.

[No. L-11196. August 30, 1957]

PRIMITIVO P. CAMMAYO, petitioner, *vs.* GUILLERMO VIÑA, in substitution for the deceased CELESTINO V. RAMOS, respondent.

PUBLIC OFFICER; DISHONEST CONDUCT; REMOVAL; DUE PROCESS OF LAW.—Where it appears that there has been a formal hearing of the charges filed against the public officer and in the hearing he was given opportunity to defend himself from said charges; that the investigator found him guilty of dishonest conduct highly prejudicial to the best interest of the service and accordingly the department head has recommended his removal to the Chief Executive, and that the latter approved such recommendation and dismissed him from the service because of his moral unfitness for *public* service, *Held*: That having these facts in view, the constitutional provision of due process of law for the removal of public officer has been complied with.

ORIGINAL ACTION in the Supreme Court. *Quo Warranto.*

The facts are stated in the opinion of the Court.

Antonio Barredo and *Primitivo P. Cammayo* for petitioner and appellee.

Jose S. Atienza for respondent Guillermo R. Viña.

Acting Solicitor General Guillermo E. Torres and *Solicitor Troadio T. Quiazon, Jr.*, for respondent and appellee.

ENDENCIA, *J.*:

In the court below, petitioner instituted this action for *quo warranto* to test the legality and constitutionality of Administrative Order No. 73 issued by the President of the Philippines, removing petitioner herein from office as Assistant Fiscal of Manila, as well as the appointment of the respondent Celestino V. Ramos as Assistant Fiscal of Manila to replace him.

There is practically no dispute as to the facts of the case.

The petitioner was a duly appointed Assistant Fiscal of Manila who took his oath of office on June 1, 1951. On July 19, 1954, letters written by him to prisoner Domingo Bebania, then serving sentence for parricide at the New Bilibid Prisons in Muntinglupa, Rizal, were found in the latter's hut in a routinary inspection of the prisoners. The letters were confiscated by the authorities of the prison and at the investigation of prisoner Bebania he executed an affidavit stating therein, among other things, that the petitioner asked him the sum of ₱200 and a rooster so that he could work for Bebania's pardon. Subsequently, the Hon. Secretary of Justice charged the petitioner with dishonest conduct as follows:

"In view hereof, you are hereby charged with dishonest conduct highly prejudicial to the best interest of the service and given five days from receipt hereof within which to submit to this Department

a detailed answer thereto, together with whatever written evidence you may desire to present in support of your side. You are, however, advised that if you so elect, a formal investigation of the charge may be conducted, at which formal investigation you will be given the opportunity to defend yourself personally or by counsel. If you elect to have a formal investigation, you may make a request therefor in your answer."

Petitioner chose a formal investigation, hence the Department of Justice appointed a special investigator to conduct a formal hearing of the charges against the petitioner. Thereafter said hearing was held where evidence was adduced both in support of the charges and in defense of petitioner. After the investigation, the investigator found the petitioner guilty as charged and, on the basis of the findings of the investigator, the Secretary of Justice, in turn, recommended to His Excellency, the President of the Philippines, the dismissal of the petitioner. Upon receipt of said recommendation, the President issued Administrative Order No. 73 finding the petitioner guilty of dishonest conduct highly prejudicial to the best interest of the service and removing him from the service effective upon receipt of said order, the most pertinent portions of which are as follows:

"It is undisputed that prisoner Bebania solicited respondent's help to obtain his release from prison; that the respondent asked from Bebania the amount of ₱200 and a "Texas" rooster; and that the rooster was never delivered to the respondent.

* * * * * * *

"The sum total of the efforts exerted by the respondent in behalf of Bebania consisted, it appears, in writing and filing two petitions for executive clemency, the last of which was denied by the President on June 23, 1954. Whatever expenses these efforts entailed could not possibly have come up to ₱200. As to his request for a fighting cock, even on the assumption that it was really intended for his co-employees, the cold fact remains that he again unconsciously sought to take advantage of a poverty-stricken prisoner by attempting to take away the latter's poor possessions.

"The foregoing amply shows that the respondent is guilty of the charge. While respondent's actuations in the premises had no connection with the discharge of his official duties and while he may not have actually succeeded in obtaining what he sought to obtain, yet his acts clearly show his moral unfitness for public service. Observance of the highest standards of personal integrity and decorum is required of all public officials if the Government is to deserve the trust and confidence of the people. A fiscal, a vital part of the machinery for the administration of justice, who deceives a prisoner hungry for freedom and seeks to extract from him what little he possessess certainly falls far too short of those standards.

"Wherefore, Mr. Primitivo P. Cammayo is hereby removed from office as assistant fiscal of Manila, effective upon receipt of notice hereof."

On November 15, 1954, petitioner received copy of said order and shortly thereafter he filed with His Excellency, the President of the Philippines, a petition for its reconsideration, but it was denied for lack of merit. As imme-

diately after the issuance of the Administrative Order No. 73, Celestino V. Ramos was appointed Ad interim Assistant Fiscal to replace the petitioner, the latter immediately instituted the present case on the ground that his removal from office was illegal, that the appointment of respondent Celestino V. Ramos was likewise illegal, and that Administrative Order No. 73 was null and void because (*a*) in the investigation conducted against the petitioner the requiremnt of due process of law had not been complied with, and (*b*) that the act of which he was found guilty did not constitute legal ground for his removal.

After due hearing, the case was dismissed mainly on the following grounds:

"That the petitioner has been legally separated and removed from office can not be disputed. The administrative order of the President was based on the result of an investigation wherein the petitioner was given an opportunity to be heard and to present his defense. The investigation was conducted by order of the Secretary of Justice, who has general supervision of the office of the City Fiscal (section 38, Republic Act No. 409, as amended by section 2, of Republic Act No. 1201).

"The finding of the investigator that the petitioner is guilty of dishonest conduct highly prejudicial to the best interest of the service is based on facts established during the hearing. It has been sufficiently proved that the petitioner sought to obtain some gifts from Domingo Bebania, Jr., a prisoner in Muntinglupa, who is serving sentence for parricide, in consideration of petitioner's efforts to secure his pardon. The petitioner's letters to Bebania were all written on official papers bearing the letterhead of the City Fiscal's Office. Evidently he intended to impress Bebania with his official position.

"That the petitioner's misconduct has no connection with the discharge of his duties as assistant fiscal is immaterial. As was said in the President's administrative order 'observance of the highest standards of personal integrity and decorum is required of all public officials if the government is to deserve the trust and confidence of the public.' The petitioner was found guilty of dishonest conduct after proper investigation and hearing, and such finding, which the court has no authority to alter, renders him unfit for the office of assistant fiscal and undeserving of the trust and confidence of the public."

Thereupon the petitioner appealed and in this instance he contends that the lower court erred:

"I. In finding that petitioner was legally removed from office and in not declaring administrative order No. 73 by the President of the Philippines removing petitioner from office as assistant fiscal of Manila illegal and unconstitutional altho the dishonest conduct imputed to the petitioner as ground for his removal was according to the text of said administrative order, not related to nor connected with the performance of the official duties of assistant fiscal of Manila and petitioner was not convicted nor even prosecuted in court for its commission;

II. In not finding that petitioner's removal from office as assistant fiscal of Manila was in violation of the constitutional and legal requirement on due processes of law when he was not given a fair and impartial hearing;

III. In holding that the position of assistant fiscal of Manila which petitioner had been holding became vacant upon petitioner's removal from office, and that there was no usurpation and unlawful holding of the office by the respondent altho respondent was appointed to that same office in place of petitioner;

IV. In denying the petition for *quo warranto* and in not rendering judgment in favor of the petitioner ousting and excluding the respondent from office and reinstating petitioner to the office of assistant fiscal of Manila with the right to receive all the emoluments appurtenant to said office from date of his removal to his reinstatement in office."

Upon careful consideration of appellant's contentions as embodied in the foregoing assignments of error, we find that the decisive one is whether he was removed from office without due process of law and whether the facts proven against him during the investigation do constitute sufficient legal ground for his removal. Petitioner-appellant does not deny that there has been a formal hearing of the charges filed against him by the Department of Justice; that in that hearing, he was given opportunity to defend himself from said charges; that the investigator found him guilty of dishonest conduct highly prejudicial to the best interest of the service and accordingly the Department of Justice has recommended his removal to His Excellency, the President of the Philippines, and that the latter approved such recommendation and dismissed him from the service because of his moral unfitness for public service. Evidently, having these facts in view, it cannot be pretended that the constitutional provision of due process of law for the removal of the petitioner has not been complied with.

As to whether the cause for which he was dismissed constitutes a legal ground sufficient for his removal from office, we concur with the court below that the acts committed by the appellant as conclusively established by the evidence adduced during the investigation to the effect that he at least asked ₱200 and a rooster so that he could work for the pardon of prisoner Bebania who was at the time serving sentence for parricide, do constitute disgraceful conduct and show his moral unfitness for public service, especially for the position of a fiscal who is an officer entrusted with the duty to prosecute crimes.

It is vigorously contended by the petitioner-appellant that under Article XII, Section 4, of the Constitution which provides that "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law", the cause for which petitioner-appellant was removed was not one of those "provided by law." It cannot be denied, however, that the cause for which the petitioner was removed, as could be seen from the Administrative Order No. 73, does constitute dishonesty and conduct prejudicial to the best interest of the service which, pursuant to

section 6 of Rule XIII of the Civil Service Rules, are sufficient grounds for removal. And since the President of the Philippines is the administrative head of our Government and as such is empowered to dismiss from the service, after due investigation, any presidential appointee found to be guilty of the acts mentioned in the aforesaid Civil Service Rule, we are constrained to hold that the petitioner having been properly removed from office, the present action has no foundation in fact and in law and that the lower court correctly dismissed it.

WHEREFORE, the decision appealed from is hereby affirmed *in toto* without costs.

Parás, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., and *Félix, JJ.,* concur.

Decision affirmed.

[No. L-10651. March 29, 1958]

LUIS BUENAVENTURA, ET AL, plaintiffs and appellants, *vs.* DAMASO STO. DOMINGO and FILEMON IGNACIO, as Chief of Police of Boac, Marinduque, defendants and appellees.

1. DAMAGES; MORAL DAMAGES, ATTORNEY'S FEES AND EXPENSES OF LITIGATION; MALICIOUS PROSECUTION; REQUISITES OF RECOVERY.—The provisions of the Civil Code in making reference to *malicious* prosecution must necessarily imply that the person to be held liable to pay damages should have acted deliberately and with knowledge that his accusation of the person subject of such *malicious prosecution*, was false and groundless. The same thing is true as regards the demand for attorney's fees and expenses of litigation authorized under Article 2208, No. 3 of the said Code.
2. ID.; ID.; NON-LIABILITY OF COMPLAINANT FOR MALICIOUS PROSECUTION.—The act of a complainant in submitting his case to the authorities for prosecution does not make him liable for malicious prosecution, for it is the Government or representative of the State that takes charge of the prosecution of the offense.
3. ID; PERSONS' FREE RESORT TO COURTS AS PUBLIC POLICY; DECREE OF EVIDENSE TO RECOVER DAMAGES.—While Courts must look upon the plight of hapless victims of unfounded and malicious prosecution with tolerance and symphathy, sound principles of justice and public policy dictates that persons shall have free resort to the courts for redress of wrongs and vindication of their rights without fear of later on standing trial for damages where by lack of sufficient evidence, legal technicalities or a different interpretation of the laws on the matter, the case would lose ground and therein defendants are acquitted. Proof and motive that the prosecution or institution of the action was prompted by a sinister design to vex and humiliate a person and to cast dishonor and disgrace must be clearly and preponderantly established to entitled the victims to damages and other rights granted by law; otherwise, there would always be a civil action for damages after every prosecution's failure to prove its cause resulting in the consequent acquittal of the accused therein.

APPEAL from a resolution of the Court of First Instance of Marinduque. Ramos, *J.*

The facts are stated in the opinion of the Court.

Leodegario Mogol and *Teofilo A. Leonim* for plaintiffs and appellants.

Casto Mirafuente and *Romeo Kahayon* for defendants and appellees.

Felix, *J.:*

This is an appeal from a resolution of the Court of First instance of Marinduque dismissing the complaint in Civil Case No. R-966 for lack of sufficient evidence to establish that therein defendants acted with malice in the filing of the complaint in Criminal Case No. 501 of the Justice of the Peace Court of Boac, Marinduque. The facts of the case are as follows:

It appears that on July 23, 1953, at the order of Rufina Mandia, administratrix of Espiridión Llena's estate, Luis

Buenaventura, Dominador Linga, Santos Mascarenas, Luis Malagotnot, Efrén Mascarenas, Bienvenido Mascarenas, Pedro Mandia and Basilio Linga gathered nuts from coconut trees planted on certain parcels of land located at barrio Bantay, Boac, Marinduque. Dámaso Sto. Domingo, claiming that he was the owner of the said parcels of land in virtue of a deed of sale dated April 25, 1951, executed by Leoncia Largado, widow of the deceased Espiridión Llena (Exhibit E), accompanied by the Chief of Police of said municipality, advised them to desist from continuing said work, which they did. On being appraised of the incident, Rufina Mandia instructed them to continue the picking, with the assurance that she would be responsible for any consequence thereof. Hence, on *July 26, 1953,* they returned to the premises and continue the gathering of nuts. Dámaso Sto. Domingo once more came with the Chief of Police and accosted them for allegedly taking his properties. One of them thus fetched Rufina Mandia who arrived at the scene and talked the matter over with Dámaso Sto. Domingo. On this occasion, Sto. Domingo even showed the documents purportedly supporting his claim of ownership over said properties and two days later, the above–named persons, together with Rufina Mandia, were arrested and named accused in a complaint filed with the Justice of the Peace Court by the Chief of Police for qualified theft, which was docketed as Criminal Case No. 501 (Exhibit A). This complaint was later amended so as to specify that the unlawful act consisted in the taking, stealing and carrying away about 1,901 nuts belonging to Dámaso Sto. Domingo, valued at ₱158.76 (Exihibit B). Hearing was duly conducted and on August 26, 1953, the Justice of the Peace Court of Boac, Marinduque, rendered judgment finding Rufina Mandia guilty as charged, but her co-defendants were absolved on the ground that they were merely hired by the former to perform the act complained of and that the evidence did not warrant even their inclusion in the complaint (Exihibit C).

On January 19, 1954, Luis Buenaventura, Dominador Linga, Pedro Mandia, Basilio Linga, Santos Mascarenas, Efrén Mascarenas, Bienvenido Mascarenas and Luis Malagotnot filed a civil action for damages with the Court of First Instance of Marinduque against Dámaso Sto. Domingo and the Chief of Police Filemón Ignacio, contending that they were unjustifiably accused of a crime by reason of which they were compelled to engage the services of a lawyer, suffered mental anguish, serious anxiety, besmirched reputation and social humiliation. Thus, they prayed the Court that defendants be ordered to pay them, jointly and severally, the sums of ₱500 as actual damages, ₱3,000 as moral damages, ₱1,500 as exemplary damages, ₱400 as attorney's fees and for costs.

Defendants filed separate motions to dismiss both alleging that the complaint stated no cause of action and that there was a pending action between the same parties over the same cause, which motions were denied by the Court in its order of March 13, 1954.

In his answer, defendant Dámaso Sto. Domingo asserted that he was the owner and possessor of the parcels of land from which the coconuts in question were gathered; that said properties were purchased by him from Leoncia Largado, which sale was duly notarized and registered on April 25, 1951; that said parcels of land were included among those awarded to Leoncia Largado by the Court of First Instance of Marinduque in Civil Case No. 438; and that Rufina Mandia was aware and had knowledge of his ownership and possession of the said properties. He denied also having knowledge that therein plaintiffs were merely hired by Rufina Mandia; that his actuations were done in the exercise of his right as an owner of the properties without intention of causing embarrassment or humiliation upon plaintiffs; and that it was the Chief of Police who determined the propriety of the filing of the criminal action. This defendant in praying for the dismissal of the action likewise asked for actual and moral damages, attorney's fees and costs.

On the other hand, defendant Chief of Police filed a separate answer averring that Criminal Case No. 501 was filed because Dámaso Sto. Domingo was in possession of a deed evidencing the latter's ownership over said properties; that there was no malice in the prosecution of plaintiffs as the complaint was filed after proper investigation was made and he was convinced that the essential elements of the crime of qualified theft were present. He, therefore, prayed that the complaint be dismissed and that he be awarded moral damages and attorney's fees.

Due hearing was conducted thereon and after the plaintiffs had rested their case, defendants filed a motion to dismiss on the ground that plaintiffs failed to establish a cause of action against them, which was correspondingly opposed by the adverse party. The lower court, after considering the arguments adduced therein and the circumstances of the case, issued a resolution dismisisng the complaint for the reason that the evidence failed to prove that defendants acted with malice in the prosecution of Criminal Case No. 501 of the Justice of the Peace Court of Boac, Marinduque; hence, the instant appeal by plaintiffs.

Unmistakably, the only question at issue in the case at bar is whether judging from the circumstances as appearing on record, appellees Dámaso Sto. Domingo and the Chief of Police of Boac, Marinduque, could be held liable for damages for having included herein appellants

as accused in Criminal Case No. 501 of the Justice of the Peace Court of said municipality. There is no question that said court, in its decision of August 26, 1953, made the pronouncement that:

> "Now, switching to the criminal liability of the other eight defendants who were merely hired by Rufina Mandia to gather the coconuts for her, this court holds that the evidence does not warrant their inclusion in the complaint. * * *" (Exhibit C),

but would this be sufficient basis to hold the plaintiffs therein liable for damages for malicious prosecution? It may not be amiss to state at this juncture that the provisions of Article 326 of our old Penal Code of 1887 referring to the crime of false accusation or complaint have not been incorporated in the Revised Penal Code and that the only provision of the latter code that has some bearing on this point is the following:

> ART. 363. INCRIMINATING INNOCENT PERSON.—Any person who, by any act not constituting prejury, shall *directly incriminate or impute* to an innocent person the commission of a crime, shall be punished by *arresto mayor.*,

which this Court has construed to be inapplicable to *malicious prosecution* of a charge against an innocent person, but "to the acts of PLANTING evidence and the like, which do not in themselves constitute false prosecutions but tend directly to cause false prosecutions" (People *vs.* Rivera, 59 Phil. 236).

It is true that the present action is not criminal but civil in nature, but the provisions of the Civil Code in making reference to *malicious* prosecutions must necessarily imply that the person to be held liable to pay moral damages should have acted deliberately and with knowledge that his accusation of the person subject of such *malicious prosecution,* was false and groundless. The same thing is true as regards the demand for attorney's fees and expenses of litigation authorized under Article 2208, No. 3 of the Civil Code. In this connection it may be stated that the act of a complainant in submitting his case to the authorities for prosecution does not make him liable for malicious prosecution, for it is the Government or representative of the State that takes charge of the prosecution of the offense.

In the criminal case involved in this litigation said to have been maliciously prosecuted, the complainant was the People of the Philippines and Dámaso Sto. Domingo, the offended party, cannot be made responsible for the result of that case that was handled by the State.

The same thing may be said of the defendant Chief of Police, Filemon Ignacio. Although in the Municipal or Justice of the Peace Courts criminal actions may be instituted upon the conplaint of the Chief of Police, yet it is the Justice of the Peace or the Municipal Judge who

accepts the charge and gives the same due course if in his opinion there is *prima facie* showing that the defendant is answerable for the crime charged.

In the case at bar, the ownership of the parcels of land involved herein is not the issue, but it is clear to Us that Dámaso Sto. Domingo, believing himself to be rightfully entitled thereto in virtue of the deed of sale in his favor and upon being informed that certain persons were gathering the products of the land without his authority and consent, repaired to the place and making known his identity as such owner forbade them from continuing such activity, which the latter obeyed. Two days later, however, Sto. Domingo again received the information that the same group was back and furthering the same act. Insensed by appellants' open defiance of his prohibition, Sto. Domingo resorted to a means that he knew of for the protection of his properties and the preservation of his right—the denunciation of the persons who took part in the commission of the act which he considered to be a violation of his right before the proper authorities. We have gone over the records of the case and they elicit nothing that may be pointed out as probable motive for Sto. Domingo to charge herein appellants of the crime of qualified theft before the Justice of the Peace Court of Boac, Marinduque, other than an honest belief that his right could be protected that way. And the same thing may be said of the Chief of Police. He was present when Sto. Domingo forbade appellants from taking his properties and was again on the spot when they found the same group committing the act which they were previously prohibited to do. There is no reason for the Chief of Police to doubt Sto. Domingo's right over the properties considering that the latter was even in possession of certain deeds evidencing ownership thereof, and having conducted an investigation, aside from the fact that he was even a witness to the commission of the act complained of, he had no alternative but to conclude that all the elements of the crime charged were present that justified the filing of the corresponding complaint. Although this is a civil action wherein a mere preponderance of evidence would be sufficient to establish the liability of defendants, still We find that the evidence adduced by plaintiff-appellants falls short of the degree that would entitle them to the remedy sought for. While We must look upon the plight of hapless victims of unfounded and malicious prosecutions with tolerance and sympathy, sound principles of justice and public policy dictate that persons shall have free resort to the courts for redress of wrongs and vindication of their rights without fear of later on standing trial for damages where by lack of sufficient evidence, legal technicalities or a different interpretation of the laws on the

matter the case would lose ground and therein defendants are acquitted. Proof and motive that the prosecution or institution of the action was prompted by a sinister design to vex and humiliate a person and to cast dishonor and disgrace must be clearly and preponderantly established to entitle the victims to damages and other rights granted by law; otherwise, there would always be a civil action for damages after every prosecution's failure to prove its cause resulting in the consequent acquittal of the accused therein.

WHEREFORE, the resolution of the Court *a quo* dated March 8, 1956, dismissing the complaint, is hereby affirmed, with costs against appellants.

IT IS SO ORDERED.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepción, Reyes, J. B. L., and *Endencia, JJ.,* concur.

Resolution affirmed.

DECISIONS OF THE COURT OF APPEALS

[No. 20254–R. September 24, 1957]

DY YAN GUAN, TIU EPIN, YU CHUY, TAN PUT and DY TIAN, petitioners, *vs.* HON. GAUDENCIO CLORIBEL, Presiding Judge, Court of First Instance of Leyte, Maasin Branch, respondent.

1. CERTIORARI; INTERLOCUTORY ORDERS CANNOT BE SUBJECT OF CERTIORARI.—An order denying a motion to quash an information is interlocutory and cannot be the subject of a petition for certiorari (Dy Yan Guan, et al., *vs.* Hon. Gaudencio Cloribel, etc. et al., G. R. No. L–12070, per resolution of the Supreme Court dated March 5, 1957).
2. CRIMINAL LAW AND PROCEDURE; LIBEL; PRIVILEGED COMMUNICATION AS BASIS OF CHARGES NOT GROUND FOR DISMISSAL OF INFORMATION.—Even if the charges contained in an information for libel are based on statements of a privileged character, that would not be a valid ground to dismiss the information. In the first place, the question of whether or not a communication is privileged is a matter of defense. In the second place, the fact that a communication is privileged does not mean that it is not actionable; the privileged character simply does away with the presumption of malice (see Article 354, Revised Penal Code). The mere fact that a communication is privileged does not place the author thereof beyond the compass of our libel law, for the reason that, by Article 362 of the Revised Penal Code, such communication "if made with malice, shall not exempt the author thereof * * * from criminal liability".
3. PREJUDICIAL QUESTION DEFINED.—Prejudicial question has been defined to be: "* * * that which arises in a case, the resolution of which (question) is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal (cuestión prejudicial, es la que surge en un pleito o causa, cuya resolución sea antecedente logico de la cuestión objeto del pleito o causa y cuyo conocimiento corresponde a los Tribunales de otro orden o jurisdicción.—X Enciclopedia Juridica Española, p. 238)." People *vs.* Aragon, 50 Off. Gaz., No. 10, pp. 4863, 4865.

ORIGINAL ACTION in the Court of Appeals. Certiorari and Prohibition.

The facts are stated in the opinion of the Court.

Remotigue, Nacua, Remotigue & Palma, for petitioners.
Judge Gaudencio Cloribel, in his own behalf.

SANCHEZ, *J.:*

On certiorari and prohibition. This Court on May 9, 1957, issued a writ of preliminary injunction to restrain the respondent Judge from preceeding with the trial of Criminal Case No. R–1458 of the Court of First Instance of Leyte, entitled "People of the Philippines, plaintiff, *vs.* Dy Yan Guan, et al., accused.

On October 2, 1956, Sy Yoc Oh *alias* Owa, lodged a criminal complaint for written defamation with the Court of First Instance of Leyte against petitioners Dy Yan Guan and Tiu Epin, and their co-accused Li Chun Lay, Jose Co *alias* Co Liong Sey, and Tan Chay Hoc *alias* Ting. That case was docketed as Criminal Case No. R–1458. The criminal complaint aforesaid was superseded by an amended information, subscribed by the Provincial Fiscal of Leyte and dated December 5, 1956, which included as new defendants, petitioners Yu Chuy, Tan Put and Dy Tian. This information overs that on or about September 27, 1956, defendants, conspiring and confederating together and helping one another, did then and there, wilfully, unlawfully and feloniously publish, exhibit or cause the publications or exhibition of a serious defamation in writing against Sy Yoc Oh, consisting of an affidavit signed by Li Chun Lay and another affidavit signed by Jose Co *alias* Co Liong Sey, both before Judge Joaquin T. Maambong of the Municipal Court of Cebu City. The aforesaid information further avers that the libelous statements therein described were made with malice, and known to defendants to be false.

On February 11, 1957, petitioners herein and defendants in the criminal case heretofore mentioned, namely, Dy Yan Guan, Tiu Epin, Yu Chuy, Tan Put and Dy Tian, filed a motion to quash the amended information for libel upon the averment that the statements in the affidavits described in the information were made in the course of the investigation conducted by the Philippine Constabulary in Cebu City in connection with a robbery case, and, therefore, privileged and not actionable.

In passing, it may be stated that the criminal case just adverted to was filed in the Court of First Instance of Cebu sometime in November, 1956 and is known as Criminal Case No. V–5701, for robbery, entitled "The People of the Philippines, plaintiff, *vs.* Sy Yoc Oh *alias* Owa, Li Chun Lay *alias* Dy Huey Lai *alias* Lim Sue Kee *alias* Crispin, and Jose Co *alias* Co Liong Sey, accused." In said robbery case, it is alleged that the defendants therein intimidated and threatened the members of the Cabalian Chinese Chamber of Commerce, represented by herein petitionrs, Yu Chuy, Dy Yan Guan and Tan Put, that they would suffer the same fate as those Chinese in Cebu who were previously rounded up as communist suspects or for engaging in subversive activities, and demanded from said members ₱40,000 to keep the latter out of trouble, as a result of which, they were able to extort from Yu Chuy the sum of ₱500 as initial payment thereof.

On February 21, 1957, the respondent Judge denied the foregoing motion to quash and directed that the

defamation case be set for hearing on the 26th of February, 1957.

On April 22, 1957, petitioners herein filed another motion, this time to suspend the hearing of the defamation case, upon the ground that the criminal case for robbery against the offended party Sy Yoc Oh *alias* Owa, and others, heretofore mentioned, is pending trial in the Court of First Instance of Cebu, and that the truth of such robbery charge is a defense in the case for defamation, and constitutes a prejudicial question determinative of the latter.

On May 1, 1957, the respondent Judge issued an order denying the preceding motion to suspend the hearing and directed that the case for defamation be tried on the merits on the 14th of May, 1957.

On May 9, 1957, petitioners came to this Court on petition for certiorari and prohibition, which, as amended, is planted upon the averment that in denying the motion to quash the amended information and the other motion to suspend the hearing, the respondent Judge gravely abused his discretion and acted outside and in excess of his jurisdiction.

The issues raised by the petition and respondent's return are clear-out and will be disposed of in their chronological order.

1. Was the motion to quash well taken?

Petitioners argue that, because the affidavits, the subject of the information for defamation, are privileged, they are not actionable.

This same question was previously raised by petitioners herein on certiorari before the Supreme Court, in G. R. No. L-12070, entitled "Dy Yan Guan, Tiu Epin, Yu Chuy, Tan Put and Dy Tian, petitioners, *vs.* Hon. Gaudencio Cloribel, etc. et al., respondents." In that case the Supreme Court, per resolution of March 5, 1957, dismissed the petition for certiorari upon the ground that the order complaint of, dated February 21, 1957, denying the motion to quash, is interlocutory. This decision became settled law. A healthy respect for a final pronouncement of the Supreme Court will stop us from discussing the merits of this question. On this score alone, the petition is unquestionably without merit.

2. Petitioners vehemently contend that the conviction of Sy Yoc Oh in the robbery case would constitute a complete defense for petitioners in the defamation case. Petitioners harp on the same question garbed in a different form—prejudicial question: Are the affidavits privileged and not actionable?

For the petition to prosper, petitioners must hurdle a number of roadblocks.

There is the non-existence of a privileged communication. Nothing extant in the information for defamation will yield the fact that the affidavits referred to are privileged in nature. The information merely says that they are affidavits—and nothing more. The petition is barren as to the fact that such a privileged communication was proven during the hearing of the motion to quash or of the motion to suspend the hearing. This is correctly so, because the question of whether or not a communication is privileged is a matter of defense. Our position finds support in Lu Chu Sing and Lu Tian Chiong *vs.* Lu Tiong Cui, 76 Phil., 669, 676, thus:

"Defendant's contention that the charge filed by him in the City Fiscal's Office was a privileged communication, is not a proper ground for the dismissal of the complaint. In the first place, it is a matter of defense. In the second place, the fact that a communication is privileged does not mean that it is not actionable; the privileged character simply does away with the presumption of malice, which the plaintiff has to prove in such a case. (*See* article 354, Revised Penal Code.)"

Furthermore, upon the provisions of the Revised Penal Code, the mere fact that a communication is privileged does not place the author thereof beyond the compass of our libel law, for the reason that, by Article 362 of the Revised Penal Code, such communication "if made with malice, shall not exempt the author thereof * * * from criminal liability."

Again, complainant's conviction in the robbery case will not constitute a complete defense in the defamation case. Reason is not wanting in support of this view. Some of the statements complained of in the information for defamation are not at all germane to the charge of robbery. Thus, we find amongst the matters charged as libelous, the following:

"62. Q—How will Sy Giok Ho pocket the money?
A—According to Dy Yan Guan, whenever Internal Revenue Agents examined the books, or any agents of the Law that might raid the Chamber, Sy Giok Ho gives money to said agents. Then for instance the amount of Five Hundred Pesos (₱500) is given actually, Sy Giok Ho will tell them that the amonut given is Two Thousand Pesos (₱2,000). That means the gain by Sy Giok Ho is ₱1,500. This (is) how said President makes money of the Funds of the Cabalian Chinese Chamber of Commerce."

which imputes upon the offended party, also the vice of indulging in bribery as well as dishonestly pocketing money belonging to Cabalian Chinese Chamber of Commerce.

PREJUDICIAL QUESTION HAS BEEN DEFINED TO BE:

"* * * that which arises in a case, the resolution of which (question) is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal

(cuestión prejudicial, el la que surge en un pleito o causa, cuya resolución sea antecedente logico de la cuestión objeto del pleito o causa y cuyo conocimiento corresponde a los Tribunales de otro orden or jurisdicción.—X Enciclopedia Juridica Espanñola, p. 228)." People *vs.* Aragon, 50 Official Gazette No. 10, pp. 4863, 4865.

The Supreme Court, in the case just cited, likewise declared that a prejudicial question must be "determinative of the case before the court." p. 4865.

Applying the legal principles just cited to the situation before us, we find that even if complainant in the libel case be found guilty of robbery in the Cebu case, that fact will not be determinative of the libel case before the Leyte court: first, because the qustion of whether or not the affidavits constitute privileged communication is yet to be determined in the defamation case; second, conceding that such affidavit constitute privileged communication, and assuming further that the statements therein contained are true, nevertheless, those facts alone would not bring about the acquittal of petitioners, defendants in the defamation case, for if malice be shown the guilt of petitioners would be established; and finally, the publication complained of imputes to complainant not only the crime of robbery which is the subject-matter of the criminal charge in the Cebu case, but also other acts tending to show bribery and dishonesty.

The above considerations will deter the hand of this Court from giving its stamp of approval to the present petition for certiorari and prohibition. The respondent Judge in directing prompt trial of the defamation charge obviously did so with a sharp eye to the principle that criminal cases must be disposed of speedily, for paramount public interest so demands.

IN VIEW OF ALL THE FOREGOING, the petition for certiorari and prohibition is hereby denied; and the writ of preliminary injunction heretofore issued is hereby dissolved. Costs against petitioners.

IT IS SO ORDERED.

Natividad and *Angeles, JJ.*, concur.

Petition denied.

[No. 19485-R. July 18, 1958]

THE NATIONAL CITY BANK OF NEW YORK, plaintiff and appellee, *vs.* PHILIPPINE RESOURCES DEVELOPMENT CORPORATION, and VICENTE L. SANTIAGO, defendants and appellees; VICENTE L. SANTIAGO, third-party plaintiff and appellee, *vs.* MACARIO APOSTOL, third-party defendant and appellant.

ATTORNEYS AT LAW; THEIR DUTIES AS OFFICERS OF THE COURT TO EXPEDITE COURT PROCEEDINGS.—A court of justice is not a marionette that must ever await the pleasure of a party litigant and his unceasing parade of lawyers. Rather it behooves members of the bar who pride themselves in being officers of the court, to exert their conscientious best to expedite, and not delay, court proceedings.

APPEAL from an order of the Court of First Instance of Manila. Lucero, *J.*

The facts are stated in the opinion of the Court.

Augusto S. Francisco, for defendant and appellant Philippine Resources Development Corporation and third-party defendant and appellant Macario Apostol.

Vicente L. Santiago, in his own behalf as defendant and third-party plaintiff and appellee.

Ross, Selp, Carrascoso & Janda, for plaintiff and appellee.

CASTRO, *J.*:

This is a case of interpleading to determine the rightful party that can withdraw a deposit of ₱1,000 made with the National City Bank of New York. The complaint was originally filed with the municipal court of Manila on March 26, 1954. From the decision of the inferior court in favor of Vicente L. Santiago, Macario Apostol appealed to the Court of First Instance of Manila in August, 1954, and there the case remained pending until October 12, 1956, when the said court issued an order dismissing Apostol's appeal from the municipal court.

The facts of this case are simple. On January 11, 1954, Santiago deposited a check for ₱1,000 in the special checking account of the Philippine Resources Development Corporation with the National City Bank of New York. The check was deposited for the purpose of converting it into cash. When a stockholder wanted to convert a check into cash, the checking account of the corporation was invariably used to expedite the cashing thereof. That this was a normal and accepted practice is supported by the documentary evidence adduced. Apostol himself had used the corporation's checking account in this manner and for the same purpose. When the check in question was deposited by Santiago, the latter was a stockholder as well as the secretary-treasurer of the corporation.

Prior to the deposit made by Santiago, however, Apostol, then president of the corporation, notified the National City

Bank of New York that the authority of Santiago to use the corporation's checking account had been suspended. Although Apostol's notification to the bank is dated December 22, 1953, or about twenty days prior to the deposit of the check in question, it is a fact nevertheless that neither Apostol nor the bank notified Santiago of the existence, much less the contents, thereof. At any rate, the bank already had the letter when the check in question was deposited, but the letter was not shown to Santiago, nor was its import communicated to him. It is likewise undisputed that the bank accepted the deposit of the check which was clearly made out in the name of Santiago. Fearing that it might become involved in the controversy that subsequently arose between Apostol and Santiago, the bank filed the complaint in interpleader.

After some delay occasioned by postponements secured by Apostol's numerous lawyers, the municipal court finally decided the case in favor of Santiago. In the said court Apostol presented his evidence, and submitted exhibits 1–Apostol, 2–Apostol, 3–Apostol and 4–Apostol. After presenting these documents, Apostol and his attorney failed to appear, and the trial was continued in their absence. The decision of the municipal court was reached after a consideration of the evidence presented by both Santiago and Apostol.

In the Court of First Instance, Apostol and his lawyers succeeded in having the hearing postponed several times. The case was finally set for hearing on October 12, 1956. On this date, however, neither Apostol nor his lawyer, Atty. Jesus G. J. Fortez, appeared in court. Two days prior to the hearing, Fortez had filed an urgent *ex-parte* motion for postponement on the ground that he had to go to Agoo, La Union, to attend to the settlement of the estate of his aunt Lucia Fortez. This motion did not contain a request that it be set for hearing, and no copy thereof was served upon any of the other parties in the case. In other words, Apostol and his counsel presumed that the motion would be granted. (The record shows that when Fortez appeared before the court on July 13, 1956 he was duly notified of the setting of the hearing for October 12, 1956). As this was not the first time that Apostol and his counsel had failed to appear in court inspite of due notice, the trial court denied the motion for postponement and ordered the dismissal of the appeal.

The only issue now before this Court is whether the trial court, considering the facts and circumstances of this case, acted within the bounds of its jurisdiction in dismissing the appeal of Apostol. Apostol claims that in dismising his appeal, the trial court deprived him of the opportunity of presenting all his evidence; that his failure and that of his counsel to appear at the scheduled hear-

ing of the case on October 12, 1956, was due to excusable negligence, and they should have been given the opportunity of proceeding on another date; and that the trial court was guilty of imprudence in dismissing his appeal.

That the check for ₱1,000 was deposited by Santiago is not denied by Apostol. That the corporation's checking account with the National City Bank of New York had been used by Arsenio Afan, Apostol and Santiago for the purpose of cashing checks payable to them, appears to be supported overwhelmingly by the documentary evidence on record. Upon these two considerations alone, there being no evidence showing a contrary import, the case could have been decided in favor of Santiago. But the lower court instead dismissed the appeal of Apostol. Did the trial court, in so doing, act correctly? We believe so.

It appears from the record on appeal that Apostol was represented in the municipal court by Atty. Emiterio Cui of the Pelaez and Jalandoni law office, then by Atty. Marasigan of the Vicente J. Francisco law office, then by Atty. Isidro Vera, and later by Atty. Jose J. Francisco. In the Court of First Instance, he was represented by Atty. Jose J. Francisco, then by Atty. Pascual C. Garcia, and then by Atty. Jesus G. J. Fortez, the latter two giving their office address as: % Augusto S. Francisco, Congress of the Philippines. Inasmuch as the record shows that Apostol's appeal in the Court of First Instance, from an early as March 12, 1956, was being handled by the law firm of Augusto S. Francisco, with which Attys. Garcia and Fortez appear to be associated, it is quite immaterial whatever urgent matter prevented Fortez from appearing on October 12, 1956, the scheduled date of the hearing. Atty. Garcia, or any other lawyer associated with Augusto S. Francisco, or even Francisco himself, could have appeared for Apostol, and proceeded with the trial, or could have asked for the postponement desired by Fortez. The fact that the postponement requested by Fortez was his first does not detract from the validity of the observations we have just made. A court of justice is not a marionette that must ever await the pleasure of a party-litigant and his unceasing parade of lawyers. Rather it behooves members of the bar who pride themselves in being officers of the court, to exert their conscientious best to expedite, and not delay, court proceedings.

The following observations made by the trial court in its order dated October 12, 1956, are pertinent:

"If the past is any index to the future, this Court might state that on March 12, 1956, said Macario Apostol, as president of the Philippine Resources Development Corporation, defendant in this case, and in his capacity as third-party defendant, also failed to

appear, as well as his counsel Atty. Pascual Garcia, so much so that the latter was punished for contempt of Court and Macario Apostol presented a petition dated April 3, 1956, to be relieved from contempt of Court for his non-appearance on March 12, 1956, and while he was relieved of the effects of that order, still he was punished for contempt of court.

"From the record of this case, it appears that a decision was rendered by the Municipal Court on June 30, 1954, in favor of defendant Vicente L. Santiago and against Macario Apostol, thereby causing the latter to appeal to this Court, and the record further discloses that he has been changing attorneys as one time or another so much so that in the case of Atty. Pascual Garcia he claimed that his services were hired only to appear on one occasion. It is hardly necessary to state that a client is bound by the actions of his attorney and must suffer for the consequences thereof, (Valencia *vs.* Judge Victoriano, Official Gazette Dec. 1954, p. 5815) and that both client and his counsel have no right to rely on the liberality of the Court or the generosity of the other party (Dimayuga *vs.* Dimayuga, Lawyers Journal, June 30, 1955, p. 291), and when they assumed the granting of their motion for postponement, they also assumed the corresponding risk, and an engagement of counsel is not a ground for postponement, especially so where, as in this case, he has had more than two months to arrange his personal affairs. (Dungao *vs.* Vizcara, Official Gazette, April 1953, p. 1515)."

In his motion for reconsideration dated November 7, 1956, Fortez stated that as the only lawyer in his family, he was called upon to attend to the settlement of the estate of his aunt. In the same breath he said that he left immediately for Agoo to have "one last look at his aunt who was already cold and dead", adding, "Should he have attended to the hearing of this case first and miss the last sight of his only aunt?" Fortez allegedly left for Agoo on October 10, 1956, when news of the death of his aunt allegedly reached him. His aunt died on September 29, 1956. It is strange that Fortez did not say when his aunt was interred. For its strikes this Court as unusual, even peculiar, that a dead person in the provinces would be kept lying in state for more than ten days waiting for a nephew to put in his appearance. Either the aunt had already been interred or was still lying in state on October 12, 1956. If she was still lying in state, and we don't believe she was, it amazes us with what alacrity Fortez went there to settle the estate among the heirs, even before the last rites for the dead were finished. If she had been buried long before he got there, then he was foisting upon the court the story that his aunt was still lying in state. At all events, we do not believe that there was any urgency in his mission of settling the estate of the deceased. We are unconvinced that a week's delay in the prosecution of such mission would have spelled any material difference.

It would appear to us, therefore, that if the lower court was guilty of anything, it was of a plethora of leniency which Apostol and his lawyers have abused.

IN VIEW OF ALL THE FOREGOING, we are of the opinion and so hold that the trial court was fully justified in ordering the dismissal of the appeal of Apostol.

WHEREFORE, the order of the lower court appealed from is hereby affirmed, with costs against Macario Apostol.

IT IS SO ORDERED.

De Leon and *Makalintal, JJ.*, concur.

Order affirmed.

[No. 19023-R. July 16, 1958]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ANTONIO ZAMBARRANO, defendant and appellant

1. CRIMINAL LAW; EVIDENCE; INFERENCE DRAWN FROM EVIDENCE SHOULD BE REASONABLE AND FAIR.—While it is settled jurisprudence that a trial court is not obliged to accept either the version of the prosecution or that of the defense, nevertheless inferences drawn from the evidence should be reasonable and fair, and anything that is conjecture or assumption is of no value. (See People *vs.* Munsayac, 53 Off. Gaz., 4858).
2. ID.; SELF-DEFENSE; UNLAWFUL AGGRESSION.—When a person aims a firearm at another with the intention of shooting him, such action constitutes in law unlawful aggression.
3. ID.; ID.; REASONABLENESS OF THE MEANS EMPLOYED TO PREVENT UNLAWFUL AGGRESSION.—The reasonableness of the means employed to prevent an unlawful aggression depends upon the nature and quality of the weapon used by the aggressor, his physical condition, his size, his character, and the surrounding circumstances, *vis-a-vis*, those of the person defending himself. In emergencies which imperil the life and limb of a person, human nature acts not upon processes of formal reason but in obedience to the imperious dictates of the instinct of self-preservation. The protective mantle of the law shields not only him who repels actual aggression but as well him who prevents an aggression that is real and imminent. And the killing of the aggressor would be justified so long as the mortal wound is inflicted at a time when all the elements of self-defense are present.
4. ID.; EVIDENCE; ALL ELEMENTS OF SELF-DEFENSE NEED NOT BE PROVED BEYOND REASONABLE DOUBT.—Whosoever pleads self-defense need not prove all the three elements thereof beyond reasonable doubt. What the law requires is that a person who pleads self-defense must establish it convincingly.

APPEAL from a judgment of the Court of First Instance of Iloilo. Querubin, *J.*

The facts are stated in the opinion of the Court.

Ceferino de los Santos, Sr. and *Jose M. Zambarrano,* for defendant and appellant.

Assistant Solicitor General Florencio Villamor and *Attorney Enrique M. Reyes,* for plaintiff and appellee.

CASTRO, *J.:*

Antonio Zambarrano appeals from the decision of the Court of First Instance of Iloilo convicting him of the crime of homicide and sentencing him to imprisonment for 8 years and 1 day of *prisión mayor* to 14 years 8 months and 1 day of *reclusión temporal,* with the accessories of the law, to pay the sum of ₱6,000 as indemnity, plus costs.

The accused admits having inflicted the gunshot wound which caused the death of the victim Bienvenido Villanueva, but pleads legitimate self-defense in exculpation.

The version of the accused relating to the incident in question is summarized by the trial court as follows:

"In the afternoon of March 23, 1955, Antonio Zambarrano was asked by his mother to take rice from their farm in San Enrique, Buenavista. He boarded a sailboat and upon arrival at Buenavista he took a truck for San Enrique about 20 kilometers from Buenavista. He ordered his men to pound palay and while waiting for the polishing of the palay he went around their hacienda which benighted him. The polishing of the rice not having yet completed he decided to go home and so he hired a special boat to take him to Iloilo City where he landed at Parola at about 11:00 in the evening. Since there was no transportation available upon his arrival he walked up to the Prince Theater located at the corner of J. M. Basa and Mapa Streets where he stopped for a moment and looked at the posters of the movie film to be shown the following day. He proceeded towards Guanco Street and in front of the Palace Theater he met Attys. Cesar Orleans and Claudio Jardiolin in company with Teruel. While they were engaged in a conversation, Eusebio Jardeleza arrived in jubilant mood informing his friends that he was accepted by his girl friend. Atty. Jardiolin invited all of them for a double celebration at the Jade Canteen because Jardeleza has been accepted by his girl friend and that was the first time he saw Antonio Zambarrano for a long time. Zambarrano was at first hesitant to accept the invitation for the reason that he was tired but later he agreed provided that they would not stay long. They proceeded to the Prince Kitchenette where they took a Crown Taxi but as soon as they boarded the car, Zambarrano told his friends that he was not feeling well and asked them to take him to his house at Rizal Street. Instead of proceeding to the Jade Canteen the taxi made a U-turn towards Guanco Street but on the way, Atty. Jardiolin suggested that they take a little drink at the Port's Inn. The taxi stopped a few feet from the door of the Port's Inn, and Eusebio Jardeleza immediately alighted followed by Zambarrano. Jardeleza went direct to the Port's Inn while Zambarrano waited for his companions. While he was pacing back and forth on the pavement in front of the Port's Inn he heard someone said, 'What are you?' (ano ka). As the accused turned around he saw Bienvenido Villanueva approaching him and replied 'What of it Ben?' (Ano man Ben?). Without much ado Bienvenido Villanueva drew his pistol and pointed it at him. Antonio Zambarrano taken aback by the sudden move of Bienvenido Villanueva, immediately drew his revolver and fired at Bienvenido Villanueva. After the first shot Ben Villanueva retreated with his hand still holding his pistol aimed at the accused. The accused continued firing four more successive shots as Ben Villanueva stepped backwards until he reached the column of the Lacson building where he fell to the ground. When the accused found Ben Villanueva lying prostrate on the ground he went towards Chiu Yet Restaurant and at the corner of J. M. Basa and Guanco Streets he met Pat. Benjamin Nombres to whom he surrendered his revolver."

Hereunder is the prosecution's version of the incident as summarized by the trial court:

"At about 11:30 in the evening of March 23, 1955 while Bienvenido Villanueva was cooling himself on a chair just outside the door of Cafe Mañana, a snack bar owned and operated by him, located at the corner of Sunburst Park and J. M. Basa Street, Iloilo City, Antonio Zambarrano and Eusebio Jardeleza in company with three other persons, were seen coming from Guanco Street going towards Prince Kitchenette with their eyes focused at Bienvenido Villanueva. In front of the Prince Kitchenette which

is located on the opposite side of J. M. Basa Street was parked Crown Taxi No. 2 in which the accused Antonio Zambarrano and his companions boarded. The taxi made a U-turn around the police traffic stand going in the direction of Guanco Street. When it passed the Cafe Mañana the five persons were still looking at Bienvenido Villanueva. The taxi stopped in front of the Port's Inn. Eusebio Jardeleza alighted from the car, hid himself behind the door and drew his revolver. The accused Antonio Zambarrano also alighted from the car and immediately proceeded towards Bienvenido Villanueva who was still sitting in front of Cafe Mañana. When the accused reached the place where Bienvenido Villanueva was sitting, he addressed him, 'What Ben' (Nano Ben). Villanueva stood up and answered, 'So what' (Nano Bala). Immediately Eusebio Jardeleza fired a shot hitting the lighted glass signboard of Cafe Mañana attached above the door where Bienvenido Villanueva stood, putting off its light. Antonio Zambarrano drew his revolver and fired successive shots at Bienvenido Villanueva as the latter stepped backward in a zigzag manner until he reached the electric post in front of the Cafe Mañana where he sought cover. Bienvenido Villanueva drew his revolver pulling the magazine from his hip pocket and bent his body in the act of placing the magazine into the handle of his pistol. While in this position, the accused Antonio Zambarrano approached him and at short range, he fired the last shot hitting Bienvenido Villanueva at the occipito-parietal region of his head. Bienvenido Villanueva spun around and fell down the ground face upward. Antonio Zambarrano, seeing his adversary lying prostrate on the ground, immedaitely went towards Guanco Street where he met Pat. Benjamin Nombres to whom he surrendered and delivered his revolver (Exhibit C). Police Lieutenant Raymundo Villegas arrived and the accused told him that he shot Bienvenido Villanueva. Lieut. Villegas ordered the accused to the City Hall. While Bienvenido Villanueva was lying prostrate on the ground his cook Ricardo Moñiva came out from the Cafe Mañana and wanted to help Bienvenido Villanueva but Policeman Rizaldo Japitana told him not to get near. Lieut. Raymundo Villegas, upon seeing Bienvenido Villanueva still alive, he called for taxi and had Bienvenido brought to the St. Paul's Hospital at Iloilo City. Eliseo Pedrosa, a driver of the Iloilo Taxicab owned by Bienvenido Villanueva which was parked in front of the Central Trading, just opposite the Cafe Mañana, after witnessing the incident started his car and went to the residence of Mrs. Ester Villanueva, wife of Bienvenido Villanueva, to inform her of the incident. He was not able to contact her so he left word to the boy to inform her of the incident. Eliseo Pedrosa went back to the Sunburst Park where he parked his car. Not long thereafter Ester Villanueva arrived and finding that her husband was no longer found therein, Eliseo Pedrosa conducted her to the St. Paul's Hospital. Ester Villanueva asked her husband what happened to him. Bienvenido Villanueva asked who she was and when she replied that she was Ester, he told her that he was shot by Jardeleza. Bienvenido Villanueva expired in the St. Paul's Hospital after a few hours after his arrival.

The trial court based its conviction of the appellant on a third version of the incident, different from the versions of both the prosecution and the defense. Thus the lower court said:

"The Court cannot accept *in toto* either the version of the prosecution or that of the defense for being adulterated with concocted

facts to suit the theory of the contending parties. Cleaning however from the evidence adduced by the parties, separating the grains of truth from the chaps of falsehood, the Court finds the following facts as sufficiently proven with moral certainty:

"At about 11:06 o'clock in the evening of March 23, 1955, the accused Antonio Zambarrano had a long walk around the City of Iloilo and before retiring home he had a brief look at the movie posters of the Prince Theater. On his way home, between the Palace Theater and Central Trading, he met Attys. Orleans and Jardiolin and Teruel with whom he engaged a conversation. Not long thereafter Eusebio Jardeleza arrived in jolly mood because his girl friend accepted him. Atty. Jardiolin offered a blow out for a double celebration of Jardoleza's romantic conquest and for having met Zambarrano whom he did not see for a long time. They proceeded towards the Prince Kitchenette to take a Crown Taxi parked in front of it. But when they boarded the taxi Zambarrano, perhaps overcome with fatigue, was in no mood to lose his sleep and he begged to be taken home so the taxi made a U-turn towards Guanco Street. But as they approached Port's Inn, Jardiolin offered his friends a drink. After the taxi stopped a few steps from the door of the Port's Inn which is about 15 meters away from the Cafe Mañana, Jardeleza alighted from the car and immediately went inside the Port's Inn. He was followed by Zambarrano but the latter waited for Atty. Orleans who was inside the car waiting for the delivery of the change of the money he paid for the fare. When Ben Villanueva saw the accused Antonio Zambarrano pacing back and forth, and mistaking him for Jardeleza, he went to him and asked. 'What are you?' The accused may have taken the belligerent approach of Ben Villanueva as an affront and he resented the intrusion. He whipped out his revolver and without much ado fired a shot. In his excitement the first shot was wild and it hit the signboard hanged above the door of the Cafe Mañana. Ben Villanueva hastily retreated towards the concrete electric post for cover as the accused continued firing three more successive shots. Not one of the shots found its mark because Ben Villauneva moved fast in a zigzag manner. As Zambarrano continued to advance, Ben Villanueva drew his pistol, took out the magazine from his hip pocket, and as he bent down to snap the magazine in its place, the accused took a careful aim at Ben's lowered head, squeezed the trigger and fired the last fatal shot. It found its mark on the back of Ben's head. The bullet splintered into two, a portion piercing his brain that caused him to reel and lose his balance and fell on the ground face upward. These are the facts which the Court believes to have taken place on the night of the tragic incident."

Inasmuch as the lower court based the conviction of the accused on its own version, and inasmuch as the errors assigned by the accused in his brief deal mainly with the lower court's findings of fact, it becomes necessary to determine, on the basis of the evidence on record, which of the three foregoing versions of the incident is approximately correct.

The essential events that led the accused to his hapless meeting with the deceased must be recounted, not only for the sake of clarity, but as well for the intrinsic purposes of a determination of the credibility of the version of the defense in its entirety.

The trial court discounts the story of the accused that on the afternoon of March 23, 1955, he was in his farm in Guimaras island. The court said: "If he really went to Guimaras there was no need for him to order the pounding of the palay because he could have brought the threshed palay to be polished in the city of Iloilo or in Jaro where rice mills abound." While on its face this observation would appear to be reasonable, we find, however, that it is a mere conjecture without evidentiary support. As a matter of fact, there is a remarkable paucity of evidence pertinent to the court's observation. Upon the other hand, there is scant evidence, if any, refuting the claim of the appellant that he had been in Guimaras, and had just arrived late that night in Iloilo City when he casually met Cesar Orleans, his cousin Eusebio Jardeleza and Claudio Jardiolin, near the Palace theater. Orleans, whose impartiality and veracity, according to the trial court, are beyond doubt, emphasized the fact that prior to the fatal shooting incident, the accused complained of fatigue and wanted to retire.

From the casual meeting by Zambarrano with Jardeleza and Jardiolin, thru their perambulations, until they finally alighted in front of the Port's Inn, some odd meters away from the Cafe Mañana, the facts are not sharply disputed. The trial court gave essential credence to the version of the defense on this phase, and anent this we are not prepared to say that the court committed any error worth our attention.

There was an attempt on the part of the prosecution to show that the accused and Jardeleza plotted the death of Villanueva on their way to the Port's Inn, predicated no doubt upon the fact that Jardeleza had an altercation with the deceased, a short time before the shooting, relative to the torn tuxedo pants which the former had ordered pressed in the dry cleaning establishment managed by the latter's wife. The trial court, however, recognized the efforts of the prosecution for what they were, in the following apt words:

"* * * This phase of the testimony of the witnesses for the prosecution was apparently encrusted in the evidence to connect Eusebio Jardeleza who, according to the testimony, fired a shot while he was in front of the door of the Port's Inn, thus hitting the Cafe Mañana's signboard and putting off the light. This Court acquitted Eusebio Jardeleza in a separate charge for murder not only on the strength of the testimony of two witnesses (reliable), Atty. Cirilo Mapa and Secretary Manuel Pareja of the YMCA, but also for the prosecution and the defense that they heard only five shots and this tallies with the five empty shells fired from the revolver of the accused Antonio Zambarrano. * * * Jardeleza could not have fired the first shot because no firearm was found in his possession nor was he a possessor of a licensed firearm. The two principal witnesses of the prosecution

were former employees of the late Ben Villanueva and this explains the fluid testimony of said witnesses."

On what actually happened in the vicinity of the Cafe Mañana, when the accused and his companions, after some meandering, finally reached the place, the evidence for the prosecution is dismally at variance with that for the defense.

At the outset, we must express our conformity with the trial court's repudiation of the essence of the testimony of the two principal witnesses for the prosecution, Eliseo Pedrosa and Ricardo Moñiva (taxicab driver and cook, respectively, of the deceased), especially on the point of who, between the accused and Villanueva, commenced the provocation that culminated in the death of the latter. It is to be noted that the story given by Pedrosa in court is diametrically contrary to his affidavit (Exhibit 3), signed and sworn to by him before deputy clerk of court Logroño after the incident. In court, Pedrosa repudiated his affidavit on the ground that it had been prepared beforehand for his signature when he went to see Cpl. Arante, also alleging that he had to sign it because the accused was waiting for him on the ground floor of the police headquarters. He however admitted that no pressure, influence or threat was exerted upon him at the time, and this fact is confirmed by Arante and Logroño whose integrity and veracity have not been challenged.

The prosecution tried to bolster its theory that the accused was the aggressor, as testified to by Pedrosa, by the testimony of Moñiva who declared that while he was standing behind the stove located far inside the Mañana Cafe, he saw a man (whose features he recognized but whose name he did not then know) approach Villanueva while the latter was seated in front of the door of the cafe and fire the fatal shot. Moñiva was obviously not in a position to see how the incident started, altho it is possible that he actually witnessed the last shot fired by the said person, whom he later identified as the appellant. Be that as it may, and disregarding for the moment the evidence presented by the defense that the accused had not reached the door of the cafe, but simply stood his ground in front of the Port's Inn, Moñiva's testimony cannot be relied upon to corroborate the testimony of Pedrosa that Zambarrano was the aggressor. It is our view that it was not possible for him to see the accused at the time the first shot was fired, for the latter came into view of Moñiva only after four shots had been fired. His testimony would thus merely serve to prove that he witnessed only the last shot fired by Zambarrano. In fact his testimony is in grave contradiction of his affidavit (Exhibit 5), subscribed and sworn to before deputy clerk of court Logroño, wherein he categorically stated that

when he heard the first shot, while he was seated on a stool inside the cafe, he saw Villanueva seek cover behind the concrete electric post, and he immediately went further inside the cafe; and when he thought it was safe to come out, he returned to a place near the door, and it was there that he heard another shot (apparently the last) and saw Villanueva fall.

The trial court correctly observed that there is no proof whatsoever that bad blood existed between the accused and the deceased; there is therefore no apparent reason for the accused to provoke Villanueva. Upon the other hand, the contention of the defense that it was the deceased, who, mistaking the accused for Jardeleza, approached the accused and asked him, "Ano ka," is, we believe, supported by a series of circumstances. Firstly, as has already been pointed out, previous to the shooting incident Jardeleza had an altercation with the deceased. The accused and Jardeleza, being first cousins, have some similarity in their physical features. Secondly, just before the shooting incident happened, which was at around midnight, the back of the accused was turned toward the deceased, and it is entirely possible that the deceased mistook the second for Jardeleza. Thirdly, on the point of death, Villanueva, when asked by his wife Ester what happened, replied that Jardeleza had shot him. On the basis of the foregoing alone, we find it impossible to accept the view taken by the trial court that the appellant, upon hearing Villanueva's statement "Ano ka?", immediately whipped out his revolver and without much ado fired at the deceased. Apart from the fact that the behavior ascribed to the accused is highly abnormal, this phase of the version of the prosecution is testified to by former employees of the deceased whose testimony should be regarded with utmost caution.

The trial court's version of the shooting is as follows:

> "When Ben Villanueva saw the accused Antonio Zambarrano pacing back and forth, and mistaking him for Jardeleza, he went with him and asked, 'What are you? The accused may have taken the belligerent approach as an affront and he resented the intrusion. He whipped out his revolver and without much ado fired a shot. In his excitement the first shot was wild and it hit the signboard hanged above the door of the Cafe Mañana. Ben Villanueva hastily retreated towards the concrete electric post for cover as the accused continued firing three more successive shots. Not one of the shots found its mark because Ben Villanueva moved fast in a zigzag manner. As Zambarrano continued to advance, Ben Villanueva drew his pistol, took out the magazine from his pocket, and as he bent down to snap the magazine in its place, the accused took a careful aim at Ben's head."

While it is settled jurisprudence that a trial court is not obliged to accept either the version of the prosecution or that of the defense, nevertheless inference drawn from

the evidence should be reasonable and fair, and anything that is conjecture or assumption is of no value (See People *vs.* Munsayac, 53 Official Gazette, 4858). Nothing in the record supports the foregoing version of the lower court.

The contention of the defense that it was the deceased who was the first to whip out his pistol and level it at the accused is, in our view, more in accord with the evidence adduced. According to Crispin Sumalacay and Rosendo de Paula, both of whom were disinterested witnesses, the face of the deceased looked red when they saw him a couple of hours before the shooting incident. This seems to be corroborated by the testimony of the wife of the deceased to the effect that earlier in the night a little celebration was held in their house on the occasion of the graduation of their two daughters. That the deceased was in an angry and excitable mood is supported, first of all by the sworn declaration of Moñiva that a person nicknamed Tarzan had an altercation with the deceased previous to the shooting incident, and, second, by the testimony of de Paula to the effect that shortly before the shooting, the deceased pulled a gun on him because he shouted "gutum" while in front of the cafe. That the deceased was wont to pull out his pistol with facility when he was in an angry mood, is entirely in consonance with his reputation for violence and irascibility. His police record ranged from threats thru oral defamation, maltreatment, illegal discharge of firearms, slight physical injuries, to frustrated murder, with three criminal convictions in the municipal court of Iloilo, to wit: criminal case 1044 for violation of article 5 of Ordinance 22, series of 1951; criminal case 11951 for slight physical injuries; and criminal case 12052 for light threats.

If anything, therefore, the version of the defense should be believed. Sumalacay who was an eye-witness of the shooting incident testified in a coherent, straightforward and positive manner. No bias is imputed to him. Upon the other hand, the testimony of the witnesses Pedrosa and Moñiva for the prosecution was correctly described by the lower court as "fluid" and hence not entitled to credence.

The trial court would deny credence to the accused on the further ground that the records of the PC headquarters in Iloilo belie his claim that he had secured a permit to bring with him his revolver. We do not, however, ascribe any importance to this. It is undisputed that the accused had a license for his revolver. The explanations given by him regarding his securing a permit to carry his revolver would indicate that he had actually secured such permit, although it had not been renewed. Assuming that the accused did indeed not have a permit to carry his revolver, this is of no moment in our deter-

mination of his responsibility for the killing of Villanueva, inasmuch as the legal requirements of self-defense are not predicated for their validity upon trivial matters such as the existence or non-existence of a permit to carry the firearm in question. The criminal responsibility pertaining to a failure to obtain a permit to carry a firearm is neither here nor there.

In view of the foregoing considerations, we are of the considered opinion that the accused did not give any provocation whatsoever to the deceased. We are likewise convinced that it was the deceased who first whipped out his pistol and aimed it at the accused.

We now proceed to determine whether the two other elements of self-defense, namely, unlawful aggression and reasonable necessity of the means employed to prevent or repel it, were present. Did Villanueva commit unlawful aggression onthe appellant? There seems to be no doubt that when a person aims a firearm at another with the intention of shooting him, such action constitutes in law unlawful aggression. When Villanueva levelled his pistol at the appellant, was it his intention to use it on the appellant? In answering this vital question, we find it necessary to dispose of one other question which clamors for reply: If Villanueva had any intention of shooting the accused, why did he not fire even a single shot at the latter? For undoubtedly, upon that single circumstance alone, the conclusion woud be inevitable that Villanueva had no intention of shooting the appellant. But in arriving at an answer, it behooves us to consider all the integrated circumstances from the moment Villanueva levelled his pistol at the appellant up to the time that he was laid prostrate by the final shot from the appellant's revolver. When Villanueva saw the appellant pull out his revolver, he did not lower the arm with which he held the automatic pistol; he did not return the pistol to his pocket; he did not utter a single word which could have serve to calm the appellant's panic. When appellant opened fire, the deceased did not turn around and flee; he did not yell out in startlement or in protest as a token of his lack of intention to fire back. Rather he retreated, stooping meanwhile he was retreating, but facing the appellant and all the while aiming his pistol at the appellant until he recahed his place of refuge behind the electric post. And once there, he knelt and stooped, and it was then that the last shot from the appellant's revolver found its mark on the back portion of the skull of the deceased. All these circumstances, to our mind, clearly indicate the desire or inention on the part of the deceased to shoot the appellant.

And yet, intriguingly, the deceased failed to fire. If he had the intention and ability to open fire, why was

he unable to fire a single shot? The answer to this question is to be found in the testimony of police lieutenant Raymundo Villegas to the effect that a mechanical failure in the automatic pistol of the deceased prevented it from firing, this failure arising from the fact that Villanueva was unable to drive the magazine tightly into place. In other words, the magazine was loosely placed and this rendered the automatic pistol incapable of firing. So that the deceased upon realizing that his pistol refused to obey his will, retreated behind the electric post for the evident purpose of changing the magazine. We have tried hard to reach some other fair and reasonable conclusion from the facts and circumstances we have already discussed but are unable to do so. It is difficult for us to conclude that the act of the deceased in retreating to the electric post and hiding behind it was merely to seek cover, because the eloquent presence of the loaded automatic pistol and a second magazine beside his body, makes such conclusion untenable. Rather they clearly demonstrate that the deceased retreated for purpose of taking a position more advantageous to him that he might be able to continue the unlawful aggression already begun by him. The observation made by the trial court that the appellant made careful aim before firing the final bullet is contrary to the events that immediately preceded the said fatal shot. The appellant was unquestionably a sorry shot. He fired at the deceased four times, and missed him completely. It is quite unlikely that being a poor marksman, he would have aimed at the head and not at the body.

Having reached the conclusion that the deceased was guilty of unlawful aggression, we now proceed to determine whether the means employed by the accused to prevent the aggression were reasonable. It is well-settled that the reasonableness of the means employed to prevent an unlawful aggression depends upon the nature and quality of the weapon used by the aggressor, his physical condition, his size, his character, and the surrounding circumstances, *vis-a-vis* those of the person defending himself. It is also well-settled that in emergencies which imperil the life and limb of a person, human nature acts not upon processes of formal reason but in obedience to the imperious dictates of the instinct of self-preservation. It is too obvious, judged by the foregoing criteria, that the revolver used by the appellant is commensurate with the weapon used by the deceased. In the very nature of things, considering that the unlawful aggression by Villanueva was all too sudden, the appellant had no time to cogitate and determine what specific course of action to take. It is easy to conceive, therefore, that the appellant's instinct, more than his

reason, impelled him to fire his revolver for the purpose of repelling the threat against his life. Even after the first shot was fired, so long as the threat persisted, the appellant could not be expected by the normal standards of reasoning to wait for the deceased to actually fire at him; the protective mantle of the law shields not only him who repels actual aggression but as well him who prevents an aggression that is real and imminent. And the killing of the aggressor would be justified so long as the mortal wound is inflicted at a time when all the elements of self-defense are present.

The trial court appears to have been of the impression that whosoever pleads self-defense must prove all the three elements thereof beyond a reasonable doubt. This is erroneous. What the law requires is that a person who pleads self-defense must establish its elements convincingly. It is our considered opinion that in this case before us, the defendant-appellant has convincingly demonstrated that he killed Bienvenido Villanueva in legitimate self-defense.

WHEREFORE, the judgment appealed from is hereby reversed, and the defendant-appellant is hereby acquitted, with costs *de oficio*.

De Leon and *Makalintal, JJ.*, concur.

Judgment reversed.

[No. 18478-R. July 23, 1958]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MATEO SOROÑGON, defendant and appellant

1. CRIMINAL LAW; WAR PROFITS TAX LAW NOT UNCONSTITUTIONAL.—There is no merit in the contention that Republic Act No. 55 is unconstitutional on the ground that it "partakes of an *ex-post facto* law; it is discriminatory, oppressive and confiscatory in nature." In the case of Republic of the Philippines *vs.* Angelina Oasin, et al., G. R. No. L-9141, September 25, 1956, the same objections were interposed against the constitutionality of the War Profits Tax Law, and the Supreme Court held that the law is not unconstitutional, citing the cases of Ex parte Garland 18 Law Ed., 366; 16 C. J. S., 889-891; Wager *vs.* Baltimore, 239 U. S. 207, 60 L. ed. 230; Welch *vs.* Henry, 305 U. S. 134, 83 L. Ed. 87; Mekin *vs.* Wolf, 2 Phil. 74; Ongsiako *vs.* Gamboa, 47 Off. Gaz., No. 11, 5613, 5616.
2. ID.; ID.; FAILURE TO PAY QUESTIONABLE TAX ASSESSMENT DOES NOT CONSTITUTE WILFUL VIOLATION OF REPUBLIC ACT NO. 55.—A taxpayer who finds himself unable to determine his exact tax liability to the Government, by reason of the confusing and baseless computations made by the Bureau of Internal Revenue, cannot be blamed if he asks for a re-examination of his account and for the postponement of the payment of the tax. Much less could it be said that failure to pay the tax, the amount of which could not be precisely determined, constitutes willful violation of Republic Act No. 55.

APPEAL from a judgment of the Court of First Instance of Iloilo. Querubin, *J.*

The facts are stated in the opinion of the Court.

Soroñgon & Soroñgon, for defendant and appellant.

Assistant Solicitor General Jose P. Alejandro and *Solicitor Ceferino P. Padua,* for plaintiff and appellee.

ANGELES, *J.:*

This is an appeal from a decision of the Court of First Instance of Iloilo, finding the accused Mateo Soroñgon guilty of having violated Republic Act No. 55, otherwise known as the War Profits Tax Law, and sentencing him to pay a fine of ₱5,000, to pay the costs, to suffer subsidiary imprisonment at the rate of ₱2.50 per day in case of insolvency, and to pay war profits tax in the amount of ₱26,801.75 to the Government of the Republic of the Philippines.

In the original as well as the amended information, it is alleged that appellant's violation consisted in: (1) filing a false and fraudulent war profits tax return by stating therein that he had a net worth of ₱48,010, ₱49,010, in the amended information) only, as of February 26, 1945, when actually his net worth as of that date was ₱96,570 (₱124,590, in the amended information); and (2) unlawfully and feloniously failing and refusing to pay the government of the Republic of the Philippines the war profits tax in the total sum of ₱97,056.03 (₱150,984.45,

in the amended information), including surcharges and interest, due on his net worth on February 26, 1945, notwithstanding repeated demands made upon him by the Government of the Philippines.

During the trial of this case, while Paterno Jamerlan, witness for the prosecution, was testifying, appellant's counsel noted that the figures he was testifying to did not tally with the figures alleged in the original information; whereupon, counsel for the appellant moved to strike out from the record his testimony. The court suggested that the information be amended. The fiscal asked leave of court to amend the information and his petition was granted over the vehement objection of appellant's counsel.

It appears that on December 31, 1946, appellant filed with the office of the Provincial Agent of the Bureau of Internal Revenue in Iloilo City, a war profits tax return wherein he stated that on December 8, 1941 he had a net worth of ₱5,000; that on February 26, 1945 his net worth was ₱53,010; that the total amount of tax due on his increase in net worth for the period from December 8, 1941 to February 26, 1945 was ₱18,522.50 (Exhibits Q, 3). Paterno Jamerlan testified that sometime in 1947 or 1948, after appellant had filed his war profits tax return, he conducted an investigation and found that the net worth of the accused on February 26, 1945 was ₱96,570. Subsequently, when he was no longer connected with the Bureau of Internal Revenue, and after the original information has been filed in court, Paterno Jamerlan discovered that the net worth of appellant on February 26, 1945 was ₱124,590. To set the records straight, he reported the matter to the provincial fiscal. Neither the accused nor the Bureau of Internal Revenue, however, was apprised of this subsequent findings of Paterno Jamerlan. Nor was a demand made upon appellant to pay the war profits tax of ₱150,984.45 including surcharges corresponding to the net worth of ₱124,590.

When asked to explain the discrepancy between his original and subsequent findings, Paterno Jamerlan declared that in his original investigation he only came across Exhibit "K", where one-half of lots Nos. 570, 957 and 921 was declared for taxation in the name of Pedro Yulo Regalado, and thought that only one-half of the said three lots was acquired by the defendant. Acting on that belief, he included in the valuation of the properties acquired by the accused during the Japanese occupation only one-half the value of the said three lots. After the original information has been filed in court, however, and when the trial of the case was already in progress, he discovered Exhibit "L", where the other half of the three lots mentioned appeared to have been declared for taxation

purposes in the name of Concepcion Yulo de Yusay, and, convinced that all of the three lots were acquired by the accused during the Japanese occupation, he amended his computation accordingly. Hence, the subsequent finding and report that appellant's net worth on February 26, 1945 was ₱124,590.

On cross-examination, Jamerlan was confronted with Exhibit "M" wherein it clearly appears that lots Nos. 570, 957 and 921 were formerly owned by Pedro de la Peña, and that said lots were sold by Pedro de la Peña to the appellant only on February 18, 1946, at a time when to acquire real properties was no longer taxable under Republic Act No. 55. In view of said confrontation, Jamerlan admitted that the war profits tax return of appellant was not false or fraudulent; that it conformed substantially with the requirements of the law, except for valuation. He added, however, that appellant would still be liable to the Government in the amount of ₱26,801.75 by way of war profits tax.

The prosecution submitted in evidence certain documents to show that in spite of repeated demands made upon the appellant he failed to pay the war profits tax due from him (Exhibits V & X).

Appellant declared that he did not received from the Revenue Bureau any letter demanding payment of his war profits tax liability; that it was only after the original information had been filed in court that he knew for the first time that he owed the Government the sum of ₱97,053.03; that immediately after knowing the amount of his tax liability to the Government he went to the office of the Bureau of Internal Revenue to ask for a reinvestigation of his case, but was told by the Chief of that office that a reinvestigation cannot be made unless he files a bond of ₱70,000; that he was not able to post the required bond because he could not pay the 3 per cent commission and could not produce the two guarantors being demanded by the bonding company; that his purpose in asking for a re-examination of his account was to seek a reduction of what he thought was an exorbitant tax; that he has no properties because he disposed all of them and invested the proceeds in lumber and land transportation business which all failed, resulting in a loss of ₱65,000; that he is jobless and lives with his son.

After due trial, the lower court convicted the accused of having violated the war Profits Tax Law by wilfully and unlawfully failing to pay the war profits tax due the Government, contrary to paragraphs (*b*) and (*c*), Section 5 of Republic Act No. 55, the pertinent portions of which are as follows:

"Sec. 5.

(*b*) *Time of payment.*—The total amount of the tax imposed by this Act shall be paid on or before the last day of the sixth month following the approval hereof. * * *.

(*c*) When the Collector of Internal Revenue finds that the payment on the due date of the tax imposed in this Act or any part thereof would impose undue hardship upon the taxpayer, the said official may extend the time for payment of such tax or any part thereof not to exceed five years, under such terms and conditions as may be required by him. Where the time for payment of the tax or any part thereof is extended, the same shall earn interest at the rate of one-half *per centum* per month from the due date thereof until paid."

The Act was approved on October 15, 1946.

Two questions are raised by the three errors listed in appellant's brief, to wit: (1) the constitutionality of Republic Act No. 55; and (2) the sufficiency of the evidence of the prosecution to show wilful and unlawful failure to pay the war profits tax of ₱26,801.75.

There is no merit to the contention of appellant that Republic Act No. 55 is unconstitutional on the ground that it "partakes of an *ex post facto* law; it is discriminatory, oppressive and confiscatory in nature." In the case of Republic of the Philippines *vs.* Angelina Oasin, et al., G. R. No. L–9141, September 25, 1956, the same objections were interposed against the constitutionality of the war Profits Tax Law, and the Supreme Court held that the law is not unconstitutional, citing the cases of Ex parte Garland, 18 Law Ed., 366; 16 C. J. S., 889–891; Wager *vs.* Baltimore, 239 U. S. 207, 60 L. ed. 230; Welch *vs.* Henry, 305 U. S. 134, 83 L. Ed. 87; Mekin *vs.* Wolf, 2 Phil. 74; Ongsiako *vs.* Gamboa, 47 Official Gazette No. 11, 5613, 5616.

The question of whether or not the war profits tax return filed by the appellant is false or fraudulent will not be passed upon by this Court in view of the concurrence of the trial judge and the Solicitor-General, which agreement of opinion is borne by the record, that the evidence presented is insufficient to establish the allegation of fraud.

We now come to the question of sufficiency of the evidence regarding the charge that appellant wilfully failed to pay the war profits tax due the Government of the Republic of the Philippines. It appears that on April 7, 1948, the Deputy Collector of Internal Revenue wrote appellant in the following tenor:

"Please be informed that, according to our records, you have not as yet paid the amount of ₱18,522.50 by way of war profits tax, exclusive of the increments thereto incident to delinquency, in spite of our letter to you dated November 27, 1947, requesting payment thereof.

"It will be appreciated if you can pay the amount of ₱23,795.25, as computed below, to the Deputy Provincial Treasurer, Jaro, Iloilo, not later than May 15, 1948, in order that this case may be closed. * * *" (Exh. V).

Appellant denied having received a copy of this letter. His denial, however, is refuted by the letter written by him addressed to the Deputy Collector of Internal Revenue on October 2, 1948. (Exhibit Y–1). In that letter appellant said the following:

"This is with reference to your letter to me, requesting payment of my war profit tax in the sum of ₱18,522.50 plus surcharges, all in the total amount of ₱24,721.37.

"Your records will show that upon receipt of the notification of the amount to be paid by me as War Profit Tax based on the returns, I filed with your office, I made a request immediately in writing to the Chief of the Income Tax Division to be allowed to file an amended war profit tax return, in view of the fact, that in filing my original war profit tax return, I was not duly assisted by a person who knows how to file a war profit tax return. Due to lack of time to prepare the war profit tax return, I had to prepare one hurriedly to avoid any penalty. In my original tax return, I failed to state my assets before December 8, 1941, this failure was due to lack of understanding of the legal terms used in the form.

"Since I wrote Atty. Lobrin of your office, I was expecting a reply from him but in vain. This is the reason why no action has been taken on your previous demand for payment of the war profit tax as I want to file an amended war Profit Tax Return which will include the properties owned by me before the war in order to be entitled to a reduction as granted me by law.

"In view of this, I would therefore request that the demand for payment of my war profit tax as appearing in the previous notice, be temporarily suspended until I shall be given an opportunity to file an amended war profit tax return, to include properties that I own before the war and in the meantime to make some corrections I made in my original tax return. Hoping that justice be given to me, I am

"Very respectfully yours,
"(Sgd.) MATEO P. SOROÑGON"

On January 5, 1951, another demand was made upon the appellant. This time the Collector of Internal Revenue demanded payment of war profits tax in the amount of ₱87,410.71 based on the net worth of ₱96,570 as found by examiner Paterno Jamerlan. (Exhibit X).

Appellant was charged of having failed to pay the Government the sums of ₱97,056.03 (original information) and ₱150,984.45 (amended information) by way of war profits tax. After trial, it was found that the tax due the Government from the appellant was, as computed by Jamerlan, ₱26,801.75. Appellant was never charged of having wilfully and unlawfully failed to pay the war profits tax as stated by him in his return. Neither was he notified or asked to pay the war profits tax of ₱150,984.45. Be that as it may, We find in the record enough proofs to negative the charge of wilful and unlawful failure to pay the tax due the Government. It is true that appellant did not pay on time the war profits tax stated by him in his return. That failure, however, does not of itself show wilful and unlawful violation of

the law. He advanced legitimate reasons for seeking a reconsideration of his case. He wanted to amend his return for the purpose of including therein properties acquired by him prior to December 8, 1941. Such inclusion would entitle him to a reduction of the tax due and collectible (See Sections 2 and 3, Republic Act No. 55). When he learned for the first time that the Collector of Internal Revenue was trying to collect from him the amount of ₱97,056.03 as war profits tax, appellant went to the office of the Revenue Bureau and asked for a re-examination of his case. His request for reinvestigation, however, was not granted on account of his failure to post the required bond. As shown during the trial, the demand for ₱97,056.03 from the appellant has no basis in fact and in law. And like We stated there was no notice of assessment or demand of payment of the war profits tax in the amount of ₱150,984.45. Failure on the part of the appellant to pay these latter amounts cannot certainly be construed as wilful and unlawful violation of the law. A taxpayer who finds himself unable to determine his exact tax liability to the Government, by reason of the confusing and baseless computations made by the Bureau of Internal Revenue, cannot be blamed if he asks for a re-examination of his account and for the postponement of the payment of the tax. Much less could it be said that failure to pay the tax, the amount of which could not be precisely determined, constitutes wilful violation of Republic Act No. 55.

All things considered, We are convinced that the prosecution was not able to substantiate its charge against the appellant. It results that he must be acquitted.

WHEREFORE, the judgment appealed from is hereby reversed. Appellant is hereby absolved of the crime charged, with costs *de oficio*.

IT IS SO ORDERED.

Natividad and *Sanchez, JJ.*, concur.

Judgment reversed.